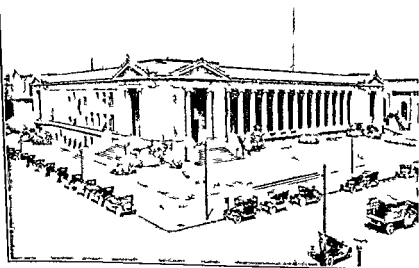
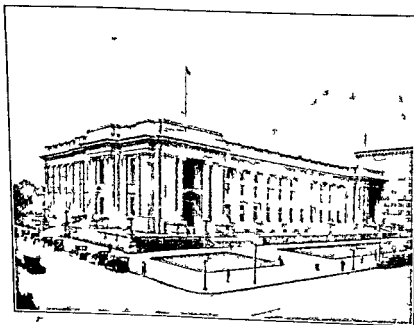


NEWSPAPER REPORTING  
OF PUBLIC AFFAIRS



THE CITY COUNTY BUILDING MEMPHIS TENNESSEE •



THE FEDERAL BUILDING INDIANAPOLIS INDIANA

# NEWSPAPER REPORTING OF PUBLIC AFFAIRS

*An Advanced Course in Newspaper Reporting  
and a Manual for Professional Newspaper Men*

BY

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328

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TO  
MARLEN E. PEW

A REPORTER WHO HAS KNOWN  
HIS WAY ABOUT IN THE WORLD

of public business in the ordinary community. The material has been organized to serve either as a textbook for an advanced course in "Reporting" or as a supplementary textbook for courses in "News Writing." It represents that portion of the materia of public affairs that it is essential for the newspaper reporter to know. Several students who have learned the content of this book have written to the author that it has equipped them for newspaper work so that their services had, at the beginning of their careers, a market value comparable to those of many experienced reporters; that it has given them an immediate confidence in their ability to report the most complex of public affairs in their local communities; and that, in a few instances, it has enabled them to obtain positions they otherwise would have failed to obtain.

The term "public affairs" in the title is not used in the high-sounding sense as applied to international relations, foreign politics, and national affairs, but in the usual sense as applied to popular government, politics, and private business as they affect the affairs of the ordinary citizen in the local community. It is not possible, and probably not desirable, to formulate a set of directions for the reporting of the complex and elusive public affairs that have their roots in the great capitals of the world, except to the extent that the reporter should possess a general understanding of what is going on in the world. This book treats of the public affairs that the newspaper man reports in his own community; if, sometimes, the path he follows here leads out of his community, it is directed to the root of national affairs only in so far as the branches from the root lead into the local situation.

The scope of the book has excluded a discussion of the operation of national and of state government, except for the brief appendix relating to state government and the chapter on the local administration of national government, because it was thought desirable to emphasize only local affairs. It was thought best, also, to omit a discussion of many of the so-called tricks of the trade. Such instruction is best given when it is developed in class discussion and in lecture by the individual teacher out of his concrete experiences as a reporter. The chief

aim here has been to furnish the student with a mass of material for reading and study and to leave the teacher free to develop discussion about the finer points of reporting.

On the other hand, the material has been expanded in certain sections so as to furnish the practical newspaper worker with a reference book. That part of the material which is intended only for the working reporter need not be learned by the student; such sections have usually been set in smaller type.

An effort has been made to accomplish two aims other than the organizing of a mass of material relating to public affairs. One aim was to point out the imperfections in our administration of justice in the hope that the reader who works or will eventually work in the law courts as a reporter will be better equipped to do his share in promoting needed reforms. Some members of the bench and bar may think that a few of the criticisms are captious. The criticisms, however, represent the best judgment of the author, who spent almost seven years in the courts as a newspaper reporter, and it is his opinion that newspapers at the present time need to be more critical, not less critical, of all public business in which the citizen has a stake. A second aim has been to stimulate a professional and realistic attitude in the student—to give the student a picture of the newspaper as a leader in public affairs as well as a reporter of public affairs, and to describe the newspaper in its real character of story-teller rather than as a mere chronicler of dull facts.

The teacher is free, of course, to assign the reading in any order that appears logical and convenient, but it seems that a study of the organization of the courts ought to precede the other study. Because the organization of courts is so complex, it is suggested that the class review Chapter II after the materials in Chapters III to VII have been studied and in the light of those materials.

It is assumed that students, in addition to performing the ordinary class exercises, will do as many reporting assignments in the courts and public buildings as are possible. Because the student cannot often spare an entire day or several successive days for the reporting of a long trial in the local courts, the

author has, at times, used several substitute methods to supplement actual attendance at trials. One method is to have the student report, in the form of a news story, the evidence introduced in the various congressional investigations which are made available in documentary form in all college libraries. A second method is to have the student prepare a review of the entire testimony given at some important trial that is made available in the newspaper files. A third method is to have the student prepare critiques of news stories of important trials. The exercises appended to each chapter are designed to be suggestive, not to be followed rigidly.

In order to assist the student in learning the many titles of officials and boards, it has been necessary to depart from the conventional style of capitalization. The titles of all officials and boards, except when they appear in the plural form, are spelled with a capital initial letter.

In a book that contains so many facts of sundry classification, only human perfection could prevent all errors. The author will be grateful to teachers and newspaper men for calling his attention to any errors and other imperfections they may discover.

Numerous suggestions and corrections in the manuscript made by Mr. John B. Sanborn, of the Madison bar and the University of Wisconsin Law School, an authority on legal practice, have been indispensable in the preparation of the material and have prevented not a few gross errors.

The author is indebted to his colleagues, Professors Willard G. Bleyer and Grant M. Hyde, of the School of Journalism of the University of Wisconsin, who have read almost the entire manuscript and have offered several helpful suggestions; to Professor Joseph P. Harris, of the Department of Political Science of the University of Wisconsin, for his many helpful suggestions; to Dean Eric W. Allen, of the School of Journalism of the University of Oregon; Professor Harry B. Center, of the Department of Journalism of Boston University; Mr. Alexander G. Brown, of the Portland *Oregonian*; Mr. John Burnham, of the Milwaukee *Leader*; and Mr. Jackson B. Morris, of the Akron, Ohio, bar; all of whom read portions of the manuscript and contributed suggestions. The encouragement of

Professor Bleyer has been of as much assistance in the preparation of the volume as have any of the suggestions.

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C. R. B.

# CONTENTS

	PAGE
PREFACE . . . . .	vii
CHAPTER	
I. THE REPORTER AT WORK . . . . .	I
Definition of News . . . . .	1
Definition of the Newspaper . . . . .	2
The Reporter's Qualifications . . . . .	3
Writing for the Newspaper . . . . .	9
Adapting Narrative Technique . . . . .	12
Homo Journalisticus . . . . .	14
Exercises . . . . .	14
II. THE COURTS . . . . .	16
Adjective and Substantive Law . . . . .	17
Kinds of Proceedings . . . . .	18
Statute and Common Law . . . . .	18
Law and Equity . . . . .	19
Jurisdiction . . . . .	20
State Courts . . . . .	22
Classification of Courts . . . . .	22
District or Circuit Courts . . . . .	22
Inferior Courts . . . . .	23
Probate Courts . . . . .	25
The News Story . . . . .	27
Appellate Courts . . . . .	31
Federal Courts . . . . .	33
Criminal Jurisdiction . . . . .	33
Civil Jurisdiction . . . . .	34
Cases Arising under the Constitution . . . . .	34
Civil Cases Arising under the Federal Statutes . . . . .	34
Cases Arising under Treaties . . . . .	34
Cases in Which the United States Is a Party . . . . .	35
Controversies between States . . . . .	35
Cases between Citizens of Different States . . . . .	35
Other Cases . . . . .	36
Federal District Courts . . . . .	36
Federal Appellate Courts . . . . .	37

## CONTENTS

Officers of the Court . . . . .	39
The Judge . . . . .	39
The Clerk . . . . .	40
Other Officers . . . . .	41
Exercises . . . . .	42

### III. PRELIMINARIES TO CRIMINAL TRIALS . . . . . 44

Kinds of Crimes . . . . .	44
Crimes against the Person . . . . .	45
Manslaughter . . . . .	46
Murder . . . . .	46
Penalties . . . . .	46
Crimes against the Habitation . . . . .	47
Crimes against Property . . . . .	47
Crimes against the General Welfare . . . . .	49
Crimes against Justice and Authority . . . . .	49
Contempt . . . . .	50
Other Forms of Crime . . . . .	54
Principal and Accessory . . . . .	55
Preliminary Proceedings . . . . .	56
Warrants . . . . .	56
Search Warrants . . . . .	57
Habeas Corpus . . . . .	58
Extradition . . . . .	58
Preliminary Trial . . . . .	59
Bail Bond . . . . .	61
Indictments . . . . .	62
Reporting Grand Jury Sessions . . . . .	66
Informations . . . . .	67
"John Doe Hearings" . . . . .	68
Exercises . . . . .	69

### IV. CRIMINAL TRIALS . . . . . 70

The Setting . . . . .	71
Special Pleas and Motions . . . . .	72
The Stages of a Trial . . . . .	76
Selection of Jurors . . . . .	76
The Opening Statement . . . . .	80
Direct Examination . . . . .	80
The Nature of Evidence . . . . .	82
Cross-Examination . . . . .	84
Reporting the Evidence . . . . .	85
The Principals . . . . .	86
Situations . . . . .	90
Forms of Testimony . . . . .	94

# CONTENTS

## CHAPTER

XV  
PAGE

The Reporter Thinks Ahead . . . . .	96
Defense Testimony . . . . .	99
Rebuttal Testimony . . . . .	100
Closing Arguments . . . . .	100
The Judge's Instructions . . . . .	101
The Verdict . . . . .	103
The Reporter's Relations with Jurors . . . . .	106
Motions in Arrest of Judgment . . . . .	108
The Sentence . . . . .	108
Suggested Reforms . . . . .	111
Exercises . . . . .	113

## V. CIVIL TRIALS . . . . . 117

Forms of Action . . . . .	117
<i>Starting a Suit</i> . . . . .	117
Pleadings . . . . .	119
Common Law Pleading . . . . .	120
Equity Pleading . . . . .	121
Code Pleading . . . . .	122
A Complaint . . . . .	122
An Answer . . . . .	125
Reporting Pleadings . . . . .	127
Conditional Privilege . . . . .	130
Service . . . . .	132
The Trial . . . . .	133
Nonsuit . . . . .	135
Damages . . . . .	135
Judgment . . . . .	136
Declaratory Judgments . . . . .	137
Decree . . . . .	138
Executions . . . . .	138
Master's Hearings . . . . .	139
Discovery . . . . .	139
Depositions . . . . .	141
Consolidation of Actions . . . . .	142
Divorce Proceedings . . . . .	144
Relations with Officials . . . . .	146
Relations with Attorneys . . . . .	147
Advance Stories . . . . .	148
Exercises . . . . .	149

## VI. APPELLATE PROCEDURE AND EXTRAORDINARY REMEDIES . . . 150

Motion for a New Trial . . . . .	151
Appeal and Error . . . . .	153
The Pleadings . . . . .	154



# CONTENTS

PAGE

The Record . . . . .	156
The Hearing . . . . .	156
Considering the Case . . . . .	157
Reporting the Decision . . . . .	158
The Mandate . . . . .	163
Pardon and Parole . . . . .	163
Extraordinary Legal Remedies . . . . .	165
Public Law . . . . .	165
Injunction . . . . .	165
Mandamus . . . . .	169
Prohibition . . . . .	171
Certiorari . . . . .	172
Quo Warranto . . . . .	175
Summary . . . . .	177
Exercises . . . . .	178

VII. BANKRUPTCY PROCEEDINGS . . . . .	179
Principles of the Act . . . . .	180
Petitions in Bankruptcy . . . . .	180
Reporting Petitions . . . . .	181
The Receiver . . . . .	184
Adjudication . . . . .	185
The Trustee . . . . .	187
The Discharge . . . . .	189
Receiverships in State Courts . . . . .	190
Improving Bankruptcy Procedure . . . . .	190
Exercises . . . . .	192

VIII. THE FEDERAL BUILDING . . . . .	193
The Post Office Department . . . . .	194
The Postmaster . . . . .	194
Superintendent of Mails . . . . .	196
Post Office Inspectors . . . . .	196
Other Postal Officials . . . . .	199
The Treasury Department . . . . .	199
Collector of Customs . . . . .	199
Collector of Internal Revenue . . . . .	201
The Income Tax Division . . . . .	201
The Prohibition Division . . . . .	203
Treasury Operatives . . . . .	204
The Revenue Cutter Service . . . . .	205
The Life Saving Service . . . . .	205
The Department of Justice . . . . .	205
The United States District Attorney . . . . .	205

# CONTENTS

xvii

CHAPTER

PAGE

The Secret Service . . . . .	207
The United States Marshal . . . . .	208
The Department of Agriculture . . . . .	209
The Weather Bureau . . . . .	209
Writing the Weather Story . . . . .	210
Agricultural Statistician . . . . .	212
Bureau of Public Roads . . . . .	212
The Department of War . . . . .	213
Resident Army Engineers . . . . .	213
Officers' Reserve Corps . . . . .	213
Recruiting Officers . . . . .	214
The Department of Labor . . . . .	214
Naturalization . . . . .	214
Immigration . . . . .	216
Bureau of Labor Statistics . . . . .	218
The Department of Commerce . . . . .	218
Coast and Geodetic Survey . . . . .	218
The Lighthouse Service . . . . .	218
Inspection of Hulls and Boilers . . . . .	218
Airplane Inspection Service . . . . .	219
The Department of the Interior . . . . .	220
The General Land Office . . . . .	220
The Civil Service Commission . . . . .	220
Officials of the Federal Court . . . . .	220
Hearings of Commissions . . . . .	223
Relations with Federal Employees . . . . .	225
Exercises . . . . .	227

## IX. THE CITY HALL . . . . . 228

The Government of a Small Town . . . . .	229
A Council Meeting . . . . .	230
Administration in the Small Town . . . . .	232
Plans of City Government . . . . .	233
Municipal Legislation . . . . .	235
Reporting Council Meetings . . . . .	237
Municipal Administration . . . . .	242
Public Safety . . . . .	242
Finance . . . . .	244
Public Works . . . . .	246
Public Health and Welfare . . . . .	249
Law . . . . .	250
Public Utilities . . . . .	251
Education . . . . .	253
The Mayor . . . . .	254

# CONTENTS

	PAGE
Zoning and Planning . . . . .	256
Civil Service Commission . . . . .	258
Aiding Citizens . . . . .	258
Exercises . . . . .	258
 X. THE POLICE STATION . . . . .	260
Police Organization . . . . .	260
Getting the Facts . . . . .	262
Newspapers as Detectives . . . . .	276
Trial by Newspaper . . . . .	278
Writing the Crime Story . . . . .	282
Hospitals . . . . .	289
Fires . . . . .	292
Advantages and Disadvantages of the Police Run . . . . .	292
Exercises . . . . .	293
 XI. THE COUNTY BUILDING . . . . .	295
Functions of County Government . . . . .	296
Taxation . . . . .	296
Law Enforcement . . . . .	298
The Sheriff . . . . .	298
The Prosecuting Attorney . . . . .	300
The Coroner . . . . .	301
Records . . . . .	303
The County Clerk . . . . .	303
Highways . . . . .	306
Election Machinery . . . . .	307
Schools . . . . .	309
Health . . . . .	310
Poor Relief . . . . .	311
Sundry Officials . . . . .	311
The Governing Body . . . . .	312
Exercises . . . . .	314
 XII. POLITICS . . . . .	315
The Nature of Politics . . . . .	316
The "Machine" . . . . .	316
The Profits of Politics . . . . .	317
How Machines Work . . . . .	318
Carrying the Precinct . . . . .	319
The Rôle of Gratitude . . . . .	320
Interest-Groups . . . . .	320
The Formulation of Issues . . . . .	321
Ephemeral Issues . . . . .	324
Intellectual Issues . . . . .	325

# CONTENTS

## CHAPTER

xix  
PAGE

Leadership . . . . .		326
The Rôle of the Newspaper . . . . .		327
A School of Democracy . . . . .		328
Party Organization . . . . .		328
Party Committees . . . . .		329
Conventions . . . . .		332
The Local Convention . . . . .		332
Functions of the State Convention . . . . .		336
The Convention in Assembly . . . . .		337
Committee on Credentials . . . . .		338
Committee on Resolutions . . . . .		339
Reporting the Convention . . . . .		339
Conferences and Caucuses . . . . .		344
Making Up the Slate . . . . .		345
Making Politics Realistic . . . . .		347
Identifying the Leaders . . . . .		348
Explaining the Issues . . . . .		351
Realistic Methods . . . . .		354
Exercises . . . . .		357
 XIII. BUSINESS AND LABOR . . . . .		 359
News about Commodities . . . . .		359
Local Business News . . . . .		361
Business Associations . . . . .		364
The Chamber of Commerce . . . . .		364
Financial News . . . . .		368
Labor . . . . .		369
Structure of Labor Organization . . . . .		370
The Local . . . . .		370
The Council . . . . .		371
The City Central, or Federation . . . . .		371
Kinds of News . . . . .		371
Industrial Disputes . . . . .		375
Strikes and Lockouts . . . . .		378
Relations with Labor Leaders . . . . .		379
Exercises . . . . .		380
<b>APPENDICES</b>		
I. NEWS SOURCES IN THE STATE CAPITOL . . . . .		383
II. GLOSSARY OF LEGAL TERMS . . . . .		385
III. SUGGESTED READINGS . . . . .		389
INDEX . . . . .		397

is not always mere information; it is more frequently *information that is interesting*; that is to say, information that the ordinary human being derives satisfaction or stimulation from reading. Oftentimes, the information in a newspaper is interesting to a reader because it concerns him directly, affects his stake in life or his individual interest. Again it is interesting because it concerns some person or place or activity that is familiar to the reader. But more frequently it is interesting because it contains an emotional element to which the human being invariably responds. News, therefore, being something more than mere chronicle or record, derives its quality in great measure from the character of the treatment given to chronicle or record.

**Definition of the Newspaper.**—The modern newspaper, on its editorial side, combines three distinct characteristics. It is, first of all, an *agency of communication* providing information about public affairs that is "food for opinion"—a psychological community center. Secondly, the newspaper is a *leader*, in some instances a pamphleteer, the modern successor of John Milton and Thomas Paine, an agency that intervenes in public affairs to warn and protect the citizen against public dangers. In these two respects the newspaper is distinctly a quasi-public institution, but in a third respect it has the characteristics of a private business. Not only is it a private business, but it is, moreover, a business that makes a deliberate effort to entertain its readers for the sake of the revenue it derives.<sup>1</sup>

Although the ordinary newspaper of today is imperfect from a social point of view, it is the best newspaper that human ingenuity thus far has been able to produce. Its improvement as an agency of social control lies in the direction of its becoming a better agency of communication, a more effective leader, and something less of a "show business." In respect of national and international affairs, the newspaper is not nearly so effective as an agency of communication and as a leader as is popularly

<sup>1</sup> The term "show business," which is used throughout this book to define that function of the newspaper which exploits the emotional side of human nature, has been used by the author in lectures for some years, but it is inadequate. Mr. Silas Bent, who wrote a book about this characteristic of the newspaper, has used the term "ballyhoo."

assumed.<sup>2</sup> But in local and regional affairs the newspaper is more useful and more powerful than is believed by those who criticize its inefficacy in national and international affairs. The limitations which exist in the national and international field do not operate to so great an extent in local and regional affairs.

By its very nature, however, the newspaper must retain for the present, some of the aspects of a show business. This limiting factor need not be deplored by the reporter provided that his newspaper is predominantly serious and dignified. Indeed, this is one factor that makes the practice of journalism an interesting profession. This limiting factor is emphasized here because it is an inescapable element in reporting. The reporter should understand that the dignity of his profession and the contribution of his profession toward the improvement of society depends upon his regarding the show-business aspect of the newspaper primarily as a limiting factor, not as the chief function of the newspaper. The chief functions of the newspaper are to provide information that is "food for opinion" and to stand vigil for the public to guard it against unscrupulous exploiters, demagogues, and other real public enemies. The reporter, therefore, is responsible to both the newspaper and the public. His duties and obligations are clear. Stated as a formula, they are:

1. Get the news.
2. Tell the truth.
3. Don't be dull.

**The Reporter's Qualifications.**—More specifically, the reporter must learn other particular rules and must possess certain indispensable qualifications. Some of the rules are suggested by the following discussion of the qualifications of the reporter.

1. The reporter should have a *wide acquaintance*. News cannot always be copied from records or taken from the mouths of speakers at public meetings; it is sometimes within the exclusive knowledge of one or more persons. Information about the more elusive aspects of public affairs and the real significance of manifest actions and events can be obtained only from certain individuals. Moreover, unless the reporter knows the

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<sup>2</sup> Cf. W. Lippmann, *Public Opinion*, Chaps. XXIII and XXIV.

# REPORTING OF PUBLIC AFFAIRS

peculiar social and public status of the various leading citizens of his community he cannot adequately interpret certain affairs; for always somebody is "behind" any movement of importance, and the proper identification of that person or group of persons is frequently the key to an unexplained situation. The reporter, of course, has little difficulty in meeting important persons, but he should cultivate the habit of obtaining information about these persons; he should know exactly who they are, what their place is in the community, and with which business and political groups they are associated or aligned.

The executive editor of a New York newspaper is said to have the widest and most diverse acquaintance in the city. He is not only acquainted with politicians, statesmen, business men, and professional men, and is intimate personally with many of them, but he knows scores of ministers, actors, pugilists, and women who are active in civic affairs and society. He met and learned to know all these persons while he was a newspaper reporter.

- ✓ 2. The reporter should possess a *critical sense*. That is to say, he should be able to check information given him against other facts in his possession and against his own sense of the probabilities. Unless the reporter has an adequate background of knowledge about the matter he is reporting and unless he knows what are the stakes at issue, he is likely to be imposed upon by an informant who desires to profit by the publication of untrue or partially true information.

One day to a certain newspaper office there came by the usual messenger from the police reporter at the police station a news story detailing the confession of an inmate of the county jail to a murder which had gone unsolved for several months. The city editor was skeptical because the man alleged to have made the confession had recently been sentenced to a life term on another murder charge and was waiting to be transported to the penitentiary. The policemen, thought the city editor, had influenced the convicted man to sign a false confession so that they would escape future criticism for their inability to explain the unsolved murder case. It later developed that the city editor's skepticism was justified and that the reporter at the police station had been imposed upon. The newspaper published a story exposing the fraud, but the opposition newspaper permitted itself to be deceived.

Dispatches filed by American newspaper correspondents who re-

How do the religious affiliations of citizens impinge upon the political situation in the community? What is the influence in municipal government of the West Side? What is the influence in public affairs of the local labor unions? Of the Chamber of Commerce? Of certain industries? Of the retired farmer in a small city?

4. The reporter should possess a *knowledge of the mechanics of government, politics, and business*. Ordinarily a reporter can acquire such technical knowledge only after years of experience and a considerable amount of reading. It is absolutely necessary that the general reporter have some knowledge of adjective law, administrative law, municipal engineering, municipal administration, federal administration in his own community, and a slight knowledge of the principles and terminology of certain portions of the substantive law. Subsequent sections of this book deal with these subjects in sufficient detail to provide the reporter with a working knowledge of them.

The news stories written about public affairs by some reporters are so vague in their references and so indefinite as to be almost valueless to the reader who is interested in public affairs. The news stories of other reporters, however, evidence such a profound knowledge of the *materia* of public affairs and the data relating to the particular subject that the reader visions the reporter, not as a journalistic Mercury flitting from office to office in a public building, but as an expert with a poised pencil leisurely poring over records and documents.

5. The reporter must have *curiosity*. He should try to understand every significant thing with which he comes in contact. Often he can obtain technical information through personal conversation with public officials, attorneys, and others, but frequently he must consult a book. The City Hall reporter, for example, should study from time to time the principles of administrative law and municipal engineering that are necessary to an adequate interpretation of the activities of municipal government.

The reporter is valuable to his newspaper because of the specialized knowledge he acquires; moreover, because of this specialized knowledge, his work is easier and pleasanter, his



news articles are more influential, and his prestige is greater. But one does not acquire information unless one is curious to discover it.

- ✓ 6. The reporter must be *resourceful*. He does not accept defeat or rebuff immediately, but uses his wits to gain his ends. He is persistent and makes every effort to return to the newspaper office with the story he started out to get. He is not satisfied to obtain a "handout" or a minimum of superficial information from a "public relations counsel," but tries to peer beneath the surface of events. He thinks quickly and does not leave his informant until he has tried to get an answer to every question that he thinks the reader will desire to have answered in the news story. When his first effort to obtain information from a reluctant informant fails he invents other means for eliciting the information.

A group of reporters excluded from an important conference of politicians devised a clever method for discovering the matters that were discussed. After the conference had ended and the politicians had gone home each one was called on the telephone by a different reporter and asked to relate what took place at the conference. Upon being told that the politician could not furnish the information the reporter requested, "I'm sorry, Mr. Blank, but will you answer just one question for me? Did you discuss so and so?" The politician, believing that no harm could result from answering just one question, willingly complied. The next morning every one of the politicians was surprised to read in his newspaper a detailed account of what had transpired at the conference: Every reporter had asked a politician a different question.

The reporter who has a wide acquaintance can usually succeed in learning about secret conferences. There is usually some person in the conference who is either under an obligation to the newspaper or who is a friend of the reporter. When there is no such person participating in the conference there are usually other persons who are privy to the matters discussed in the conference who are willing to accommodate the reporter or his newspaper.

7. The reporter should have *poise*. He obtains and holds the confidence and respect of many important persons. He cannot usually obtain important information unless he has the respect of his informants and—frequently—unless he has their good will. The reporter should not be apologetic, neither should he be overbearing. There may be times when he is compelled to wheedle

information out of a person, and again when he must almost browbeat a reluctant informant, but those occasions are infrequent. By being affable and tactful, the reporter is usually able to obtain the information he desires just as a salesman who is affable and tactful is able to achieve many sales. But affability should not usually be carried to the point where the reporter puts himself and his newspaper at a disadvantage. The reporter should remember that his job is to obtain news, and he must therefore be persistent in his search. Ungentlemanly methods of eliciting information, however, injure the reporter's newspaper as often as they serve it. The reporter, moreover, should not get excited. If he is to obtain and sift information and present it accurately and effectively, he must "keep his head." The reporter should train himself to be an amiable conversationalist and an expert interrogator. Especially should he frame questions which elicit a direct answer. To inquire generally, "Do you know anything today?" or to frame negative questions, such as "You wouldn't care to tell me the amount of the estate, would you?" is to encourage inadequate answers.

8. The reporter should be *enthusiastic*. Because the high quality of news frequently depends upon the skill with which it is treated the reporter must at all times feel keenly about many of the events and situations he observes. This does not mean that the reporter should not be judicial in his manner of recording facts; it means that he must be interesting in addition to being fair. That is to say, the reporter, in writing a news story, should keep in mind the fact that his readers feel keenly. If the reporter ever becomes indifferent to the human element in the affairs of men, if he ceases to remember that his readers have emotions, he is, indeed, journalistically blasé, and his usefulness as a reporter is considerably impaired. For some periods and in some seasons many of the assignments handled by reporters are rather dull, and there is a temptation for the reporter to perform as a mere chronicler instead of as a newspaper man. The best way to avoid getting into a temporary rut is to will to be enthusiastic.

9. The good reporter is a *literary craftsman*. Sometimes the only requisite of a news story is that the diction be correct.

Whenever the purpose of the news story is merely to report information regarding public affairs, the work of the reporter consists solely of relating the action taken or contemplated, the significance of the action, and, in some instances, the manner in which the action was taken. For example, in reporting a meeting of the City Council the first duty of the reporter is to record and explain the action of the Council; seldom does he find it necessary to write anything else. Oftentimes, however, certain events such as trials require a description of the setting or a narrative record of the situation. This presumes that the reporter will construct a picture for the reader, and it is then that literary craftsmanship is required. Because it has been assumed that American newspaper readers demand unembellished facts regarding controversial public affairs, news stories have been written impartially and impersonally, and reporters have come to use stereotyped forms and expressions. This practice has frequently prevailed even when the event merited and invited description and narration. So strictly has the American reporter adhered to the "no comment" rule that news stories in American newspapers have been distinguished by their dullness. It was not surprising, therefore, that when editors recently began to demand stories which should embody the elements of narration and description as well as exposition, the news writers responded by pumping their stories full of clichés and inappropriate adjectives. The result has been in many instances a deplorable "slopping over."

**Writing for the Newspaper.**—The distinguishing quality in the news story that embodies elements of narration and description is *vividness*. This is achieved by painstaking labor either in the preparation of the particular news story or in hours of practice outside of working hours. To obtain vividness without at the same time destroying truthfulness, the news writer must present a picture of the event or situation that is not only objective but which also embodies his own sense impressions. It is the addition of the news writer's subjective impressions to the objective picture of the event that produces vividness. The only restraints upon his writing are those dictated by his good taste, his zeal for truth, and his pride in his craftsmanship. The

news writer's impressions cannot, of course, be separated from his imaginative faculties, but there is no justification for exaggeration, sentimentality, or falsehood. The following portion of a description by Russell Owen of the *New York Times* of Col. Charles Lindbergh's take-off from the Roosevelt aviation field for his trans-Atlantic flight is a news story made vivid by the writer's impressions of the event, but which in no wise presents a false picture:

A sluggish, gray monoplane lurched its way down Roosevelt field this morning at 7:52 o'clock, slowly gathering momentum. Inside sat a tall youngster, eyes glued to an instrument board or darting ahead for swift glances at the runway, his face drawn with the intensity of his purpose.

Death lay but a few seconds ahead of him if his skill or his courage faltered. For moments as the heavy plane rose from the ground, dropped down, staggered again into the air and fell, he gambled for his life against a hazard which had already killed four men.

And then slowly, so slowly that those watching it stood fascinated, as if by his indomitable will alone, the young pilot lifted his plane into the air. It dipped and then rose with renewed speed, climbing heavily but steadily toward the distant trees. . . .

And then, very gradually, but surely, the wide silver wings lifted toward the skyline. A pale sky showed between them and the green beneath.

A soft glow came above the clouds, the first of the sun breaking through. Far off above the trees the silver wing dipped and was gone.

Lindbergh was on his way to Paris.

In the ordinary report of public affairs the reporter cannot often achieve vividness except at the expense of truth. Yet a report of public affairs frequently contains more of truth because the writer has provided a setting, a description of the principals, and a report of the physical and emotional behavior of those who are present. The following account of a hearing before a congressional committee by James O'Donnell Bennett, in the *Chicago Tribune*, illustrates how a report of public affairs can be made interesting:

How to get a distracted industry on a twentieth century basis? How to clean up conditions affecting half a million coal miners and their families? How to correct evils which make the bituminous coal fields of Ohio, West Virginia, and central and western Pennsylvania fecund breeders of revolutionaries? How to halt the pauperizing of Iowa and Indiana communities which results from the efforts of large consumers to beat down prices by ceasing to buy coal in areas that once supplied them?

To find answers to these questions the United States senate today started a \$10,000 series of hearings which probably will last ten days and which will bring to the witness stand union labor leaders, mine operators, and railroad magnates.

The questions are seventy-five years old; in the last two years some of them have become desperately acute.

"Mr. Lewis," said Senator Watson at the end of this close-packed day, to John L. Lewis, president of the United Mine Workers, "you are a man of ability and of great sincerity. Tell the senate's investigators how the legislative branch of the United States government can help to remedy the conditions of unemployment and disorganization which you have described."

\* \* \*

Burly John Lewellyn Lewis was on the witness stand three hours and forty minutes and was allowed time off for luncheon. When he was called to the stand by Senator Watson . . . he replied with military precision, "At your service, sir."

Morning and afternoon he was ready, at the drop of the hat, to be truculent, but truculence evaporated under the sunshine of the obvious sympathy and the studied courtesy of the senators. Once Watson, who has a profound admiration for Lewis—plus a lively sense of his power—slipped in ceremony and called him "John." Lewis let it pass.

He was a good witness. He came heavily documented, and when he knew a thing he could give you chapter and verse for it. When he did not know he said so. His vocabulary was copious. He used "meditated" "punctiliously" and "nervous" with much aplomb and precision, and he paddled what he called "the union busting methods" of young John D.

Rockefeller's Consolidation Coal Company.

\* \* \*

Senator Gooding, flourishing the fact that he is a farmer, "and a dirt farmer, too," asked the hirsute Lewis, who has a mane like the late Henry Ward Beecher, whether he were a practical miner. John gave English-born Gooding, who inclines to the oracular, a withering look, and replied, with ominous sweetness, "No man can be elected to an office in the United Mine Workers of America unless he has had at least five years' experience as a practical miner. I was fourteen years underground, Senator."

\* \* \*

Turning at this point to a representative of the operators, who sat grinning at him, hairy John said, "You can either deal with the United Mine Workers of America or you'll deal with harsher elements afterwards."

The grin vanished.

Always, Mr. Lewis returned to the railroads as the head and front of what he described as offenses which have reduced the bituminous coal industry to demoralization. . . .

Although vividness is essential to many news stories, the reporter must be careful not to emphasize vividness at the expense of truth. There is an especial danger of this in the reporting of criminal trials. Although in criminal trials the reporter is sometimes warranted in embodying his subjective impressions in his objective account of the trial, it is difficult to record impressions without being unfair to the persons involved; for impressions connote comment, and comment upon a trial is unfair. Any emotionalism that is not warranted by the testimony is unfair comment because it provokes in the reader a reaction of sympathy or anger.

**Adapting Narrative Technique.**—Many news stories are improved by the use of narrative technique. The reporter ought to know enough about narrative writing to be able to recognize an interesting story when he encounters it and to construct a narrative from the material facts. Any narrative that is more than a tale has a plot. A plot has rising action, or suspense, and a climax. Plot is developed by means of char-

acters, situations, and dialogue. Seldom are all of these elements combined in a news story; especially is the element of suspense lacking. But in many news stories there is the semblance of a plot, and there are situations and interesting characters. The following news story is one of the few that combine all the elements of narrative:

James Duffey, 552 Prospect avenue, Bronx, chauffeur of Yellow Cab No. 112, picked up three "fares" at 2:15 o'clock this morning from the Tam o' Shanter Club, No.— West 40th street. He remembers one "fare" as a short, stout man, another as a medium-size man with thick, iron-gray hair, and the third as a slender young woman with bobbed hair. All three were in evening dress.

"Drive to the Plaza Hotel," the gray-haired man directed.

At that uptown address the young woman alighted and entered the door. The gray-haired man directed the cab to an address in the 2100 block of Broadway.

Duffey's cab proceeded northward. At the Broadway address, the gray-haired man got out, asked for a meter receipt, and paid the tariff with a five-dollar bill.

"No— West One Hundred Sixty-second street," he said curtly, and turned into the apartment house before which he was standing.

Duffey slammed the door and drove on to Washington Heights. He stopped at the address, a four-story red-brick apartment house. Without leaving his seat, he opened the rear door from the outside with his left hand, rang the meter, and pulled the tariff slip. He waited, but the passenger did not get out. Duffey twisted in his seat and saw the short, stout man sitting immobile in a corner.

"Wake up!" Duffey shouted.

The short, stout man didn't budge. Duffey alighted and thrust his hand inside the door. He shook his "fare" vigorously. Suddenly his hand fell to his side and he stepped back hastily.

After a moment he approached again, peered into the man's face, and felt his hands. The short, stout man was dead.

Also, Duffey told police at the One

Hundred Twenty-fifth street station, the man's shirt studs were missing and he carried no watch or wallet. Over his left temple was a deep wound made by a blunt instrument.

Detectives Brace and Miller of the homicide squad have been assigned to the investigation.

Unfortunately, some sensational newspapers, in order to evoke emotional response in readers, exaggerate the qualities of the principals in some events and make heroes or villains of them. Some of the principals in news stories are really heroes or villains and should be portrayed in their real characters, but newspapers ought not to exaggerate character in order to provide their readers with heroes and villains every day. A few sensational newspapers also deliberately twist the facts so as to manufacture a plot, thus providing a continuity of narrative. This practice is confined to a few sensational newspapers, but other newspapers are sometimes tempted to "improve" a story by the invention or alteration of details. Such a practice, obviously, is unethical.

The discussion of this subject is continued in succeeding chapters in connection with the particular kind of event that is to be described and narrated by the newspaper reporter.

**Homo Journalisticus.**—The newspaper reporter in certain respects, is unlike the business man and the other professional men. He is something of the artist, and something of the "man of the world." His triumphs are measured by his achievements, not by profits. Like the novelist, he is a storyteller; and like the university professor, he is a seeker of facts and an analyst. But unlike either of them, he performs in a world of action, and he addresses the mentality of the "average" man. Sometimes his work demands courage, and always it demands honor and an urge for civic righteousness. And, needless to say, his work is difficult—there are not many "ideal" reporters.

### EXERCISES

1. In Russell Owen's story of Lindbergh's take-off, which portion represents the writer's own impressions? Examine a photograph of the *Spirit of St. Louis*, and then decide whether the



reporter could actually observe the behavior of the pilot in the plane.

2. From what sources did the reporter, or rewrite man, obtain the details mentioned in the story of the taxicab murder?
3. The directors of the Chamber of Commerce hold an executive meeting at 5 o'clock in the afternoon to elect a new president. The executive secretary of the Chamber, a stockholder in an afternoon newspaper, desires to withhold the information from the morning paper until the following day. He pledges the directors not to divulge the news of the election. The office of president is not desired by many of the prominent business men in the city whom the Chamber of Commerce is most eager to elect. The morning newspaper, which is aware of this situation, possesses a list of the five men most likely to be elected, and knows that two other men not on the list are desirous of the election. By what method can it obtain the information provided none of the directors will reveal it?
4. Prepare a news story of 800 words from the testimony given before the United States Commission on Industrial Relations, Senate Document No. 415, 64th Congress, 1st session, Vol. VII, pp. 6347-56, 6360-70, 6399-6406. Write the story for the Associated Press night wire, and as if you had been sitting in the committee room throughout the day. Date the story "New York, May 28—." Assume that all the witnesses testified on the same day. This exercise is a test in evaluating evidence. Remember! you are telling the nation a story that will have a far-reaching effect on the relations of capital and labor. Be fair; be accurate; be interesting. Don't be dull!

## CHAPTER II

### THE COURTS

IN much of our civil conduct there is an element of conflict. The race has learned from centuries of experience that adjustment of conflict is necessary in our personal and social relations, and the supreme power in the state has therefore prescribed rules of conduct, which we call law. The administration of justice according to law is entrusted to the courts and to certain governmental officials. The news stories which concern the administration of justice are interesting because they treat of the conflict element in human behavior; they are important because they involve public and individual rights.

Oftentimes legal proceedings are of private nature and hence of little public interest. For example, a lawsuit in which two farmers dispute the establishment of a fence line is of no interest to any person except the parties to the suit and their neighbors and friends. But a suit in which two sheet music publishers dispute the title to copyright of a "song hit" valued at several hundred dollars is of public interest because of the popularity of the song, and because of the news conveyed to the reader of the alleged value of a song; if, moreover, as a part of the evidence in the case, a band of musicians plays the song in open court, the trial is of even more interest because of the incongruous picture of a court room conveyed to the reader in the news story. Of even more interest is a criminal trial which involves the life or death of an interesting person, or which promises a solution to a perplexing mystery. Perhaps of less interest but oftentimes of more importance is a legal proceeding upon which depends a public right or a public stake, such as a suit to lower the electric light rates, a suit to nullify an obnoxious law, or a suit involving the right of the government to sterilize imbecile criminals.

Newspaper reporters examine the court dockets and select to report those legal proceedings which are of greatest public in-

**Kinds of Proceedings.**—Whenever an aggrieved party invokes the law to secure himself in his rights, he resorts to one of several kinds of legal proceedings. He may, for example, institute *compensatory* proceedings, that is, sue to recover damages to compensate himself for an injury inflicted by another on his person, property, or reputation. He may institute *compulsory* proceedings, such as those to compel the specific performance of an act by another. He may institute *preventive* proceedings to restrain another from performing an act that is calculated to injure him. Or, in the public interest, the state itself may institute *punitive* proceedings to punish by criminal prosecution an offender against society.

**Statute and Common Law.**—Law, being derived from two sources—custom and precedent on the one hand, and popular will on the other hand—is consequently distinguished as common law and statute law. Whenever a legally constituted lawmaking body, such as Congress or a state legislature, makes a declaration of legal rules, it is written down in the statute books and remains in effect until it is repealed by the lawmaking body; this kind of law is statute law.

Statutes are either *mandatory* or *directory*. Ordinarily, but not always, a mandatory statute declares that an act "shall" be done, and a directory statute declares that it "may" be done. Some statutes, also, are called *declaratory* because they are passed for the purpose of interpreting other statutes.

Statutes passed by the various state legislatures are usually printed and bound at the close of each legislative session, and the volume is usually called "session laws." From time to time these statutes are codified, that is, all the statutes dealing with a specific subject are grouped in a "chapter" or "title," and the "chapters" or "titles" are divided into "sections" and "sub-sections." The chapters have such titles as "The Judiciary," "Discovery," etc. In some states a decimal system of numbering statutes has been devised in order to provide convenient reference. The revised editions are published from time to time. The United States statutes are published in volumes called *United States Compiled Statutes* and *United States Statutes at Large*.

Common law is derived from custom and judicial precedent. It is not written in statute books, but is embodied in the decisions

of courts and in textbooks and commentaries of learned jurists. Yet it is just as binding as statute law unless it is overruled by the passage of statutes. Because judges ordinarily rule on points of law according to precedent, attorneys, when they file briefs, cite every possible precedent of common law to uphold their contentions. Frequently the attorneys bring to court volumes of judicial decisions and in the course of argument read passages from numerous judicial opinions in an effort to convince the court that the preponderance of precedent sustains their view. The common law in the United States is derived historically from the English common law.<sup>2</sup> It varies in the different states because it evolved in different ways in the various colonies and because even now judges set new precedents by their decisions. Hence we sometimes hear of the "Kansas rule" or the "Massachusetts rule."<sup>3</sup>

**Law and Equity.**—It is obvious that there is a distinction between law and justice. This was recognized as early as the reign of Edward I in the thirteenth century. The common law jurisprudence provided that a person who was injured by another could, by suing in the courts, recover compensatory damages, but it was not possible until Edward's time to institute preventive proceedings that would inhibit a malicious person from inflicting an injury upon another or doing him irreparable damage. For example, until Edward's time a person defrauded of his land might sue to recover damages, but there was no method by which he could obtain a conveyance of the title to his land. Therefore, courts of "equity" were established in which persons could sue whenever there was no adequate remedy at common law, and there arose the saying, "equity begins to run where the law leaves off."<sup>4</sup>

In England the judicial power was—as it is now—vested in the crown. The king, therefore, in order to prevent injustice

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<sup>2</sup> There is no common law in Louisiana, the system of law in use there being derived from the Roman (or French) civil law.

<sup>3</sup> See p. 131.

<sup>4</sup> "There are," wrote Sir Robert Filmer, in 1652, "more suits for relief against laws than there be for the observation of laws: there can be no such tyranny in the world as the law if there were no equity to abate the rigour of it."—*Observations Concerning the Originalls of Government*, p. 21.

by law, appointed his chancellor (an ecclesiastical lawyer and the "Keeper of the King's Conscience") to advise him when a necessity arose for the king's intervention against the injustice of law. Eventually the chancellor himself, without consulting the king, decided upon intervention and there developed the *Chancellor's Court*, or the *Court of Chancery*. The Court of Chancery, after hearing a case, would issue a *decree* which compelled the specific performance of an act or restrained the performance of an act calculated to injure another. The chancellor formulated a code of rules whereby compulsory and preventive proceedings could be instituted, heard, and determined, and they survive in principle until this day.

Today in American courts of chancery—or courts of equity as they are called in most states—the Judge issues decrees of injunction, foreclosure, divorce, and other decrees that forbid or command the performance of an act. These decrees issue in nearly all compulsory and preventive proceedings where the aggrieved party does not have an adequate remedy at law. Jurists therefore speak of cases which concern compulsory and preventive proceedings as *cases in equity* and of cases which concern compensatory proceedings as *cases at law*.<sup>\*</sup>

In Chapter V we shall observe how proceedings differ in law and equity, and how in many states statutes have been passed to supersede the common law procedure.

**Jurisdiction.**—Why are there so many different courts? How does a court derive its authority to hear and determine causes at law? By what authority does one court hear one kind of cause and another court a different kind of cause?

A satisfactory answer to these questions can be formulated in a single word—jurisdiction. Another name for jurisdiction is judicial power. The power to hear and determine causes at law submitted to a particular court is conferred by the constitution and legislature of a state or of the United States. The constitution makers and legislators have seen fit to confer jurisdiction in different ways by establishing certain courts and defining their jurisdiction. The various terms applied to juris-

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<sup>\*</sup> There are exceptions, a notable one being the action of "replevin." See footnote, p. 117.

diction to describe the kinds of causes that a particular court is empowered to hear and determine are jurisdiction over the person, jurisdiction over subject matter, original jurisdiction, appellate jurisdiction, and concurrent jurisdiction.

The authority of courts, in the first place, is limited by jurisdiction over the person (*in personam*). For example, an Illinois court cannot, generally, bring a citizen of Texas into court to answer a civil suit unless, singularly, the officials of the Illinois court are able to serve a summons upon the citizen of Texas while he is in the territorial jurisdiction of the Illinois court. A court has jurisdiction over only those persons upon whom summonses can be served within the territorial jurisdiction of the court.\*

The authority of courts is also limited by jurisdiction over subject matter (*in rem*). For example, an Ohio court cannot, generally, determine the title to land in Michigan. An Ohio court may, however, attach the property (*res*) of a citizen of Michigan if the property of the latter is within the territorial jurisdiction of the court. Certain inferior courts, also, do not possess power to hear cases involving large sums of money (*res*).

Some courts are authorized to hear and determine cases only at their inception, that is, they have original jurisdiction but not appellate jurisdiction, or power to review a case which has been determined in a "lower" court. In every state is a special appellate court which reviews cases which have been determined in the lower courts and appealed by the defeated party.

When two courts are authorized to deal with the same subject matter at the choice of the suitor they are said to have concurrent jurisdiction. For example, in Cook County, Illinois, there has always been a *Circuit Court* with original jurisdiction in civil and criminal cases; but an additional court, called a *Superior Court*, was afterward established by the state legislature and given concurrent jurisdiction with the traditional Circuit Court.

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\* An exception: in certain cases, such as divorce actions, a summons may be served upon a party by "publication." This form of service is discussed on p. 133.

## STATE COURTS

**Classification of Courts.**—Courts may ordinarily be classified according to the functions they exercise, as follows:<sup>1</sup>

1. Highest appellate court
2. Intermediate appellate courts
3. Local courts of original jurisdiction
  - (a) Criminal courts
  - (b) Civil courts
  - (c) Equity courts
4. Inferior courts
  - (a) Probate courts
  - (b) Criminal courts
  - (c) Civil courts

**District, or Circuit Courts.**—Generally speaking there is in every state a system of local judiciary which has original jurisdiction in all civil and criminal cases; these courts form the backbone of the state's judicial system. Ordinarily they are called *Circuit Courts* or *District Courts* because the state is divided into judicial districts of several counties each. The term "circuit" came to be applied in these courts in some states because in earlier days the Judge, like the itinerant preacher called a "circuit rider," went around his district on horseback, holding a term of court in each county seat three or four times a year. The practice of holding successive terms of court in the county seats that compose a judicial district prevails today except in the more populous counties. A populous county comprises in itself a judicial district, and a county in which a metropolis is located has a District Court with several branches; the Circuit Court of Cook County, Illinois, for example, has twenty judges.

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<sup>1</sup> This is only a general classification and does not include all the courts established in the various states. For example, only one-fourth of the states have intermediate appellate courts. In many states, too, there are established numerous courts among which are distributed the various functions of the local courts; such courts are: the Court of Domestic Relations, the Juvenile Court, the Small Claims Court, the Court of Probate and Insolvency, the Land Court, and many others. Special courts, also, are established in certain populous counties but not in general over the whole state.

The student is urged, at this point, to learn the name of the court or courts of original jurisdiction in his state. If he intends to practice journalism in another state he should also learn the name of the courts in that state.

In the following states the local court of original jurisdiction is called the Circuit Court: Alabama, Arkansas, Florida, Illinois, Indiana, Kentucky, Maryland, Michigan, Mississippi, Missouri, Oregon, South Dakota, Tennessee, Virginia, West Virginia, and Wisconsin.

In the following states the local court of original jurisdiction is called the District Court: Colorado, Idaho, Iowa, Kansas, Louisiana, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Texas, Utah, and Wyoming.

In the following states the court of original jurisdiction is called the Superior Court: Arizona, California, Connecticut, Delaware, Georgia, Maine, Massachusetts, New Hampshire, North Carolina, Rhode Island, Vermont, and Washington. The Superior Court of Illinois has concurrent jurisdiction with the Circuit Court.

In the following states the court of original jurisdiction is called the Supreme Court: District of Columbia, New Jersey, and New York.

In the following states the local court of original jurisdiction is called the Court of Common Pleas: Ohio, Pennsylvania, and South Carolina. In addition to the Court of Common Pleas, South Carolina has a local court of original jurisdiction in criminal matters that is called the Court of General Sessions.

With few exceptions, these courts have original jurisdiction in criminal cases and in both branches of the civil law. In the ordinary District Court, the Clerk prepares three separate dockets—criminal, law, and equity—and the Judge hears them one after the other. In the more populous districts, however, different judges are assigned to hear different kinds of cases, and there are thus said to be different branches, or divisions, of the court, such as *criminal division* and *civil division*. In six states\* the courts of equity are separate from the courts which hear cases at law, and different judges are elected to sit in the different courts.

**Inferior Courts.**—In addition to the District Courts (or whatever the courts of original jurisdiction are called in the various states) there are certain inferior courts which have a

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\* Arkansas, Delaware, New Jersey, Mississippi, Tennessee, and Vermont.



very limited jurisdiction and which are quite often not courts of record. *Courts of Record* are those which possess a seal, whose judicial proceedings are recorded for perpetual testimony, and which have the power to imprison or fine a person for contempt of court.

Every state has inferior courts, such as those over which a Justice of the Peace presides and nearly every city has a *Police*, or *Municipal Court*. The Justices' Courts, sometimes called *Magistrates' Courts*, have criminal jurisdiction in that they may fine persons for committing misdemeanors and may commit to jail to await trial persons accused of felonies. They are not permitted to try a case involving a felony, but may hold a preliminary hearing and require a person accused of felony to execute bail bond or go to jail until the grand jury or the District Attorney has acted upon the case. In isolated sections of the country these courts serve a useful purpose in that they provide accused persons with a quick preliminary hearing and permit officers of the law to obtain warrants of arrest in emergencies.

These Justices', or Magistrates', Courts also have a limited civil jurisdiction. They are permitted to hear and determine civil actions which involve a small sum, and in that respect have concurrent jurisdiction with the Circuit Courts. In Oregon, for example, Justices' Courts have concurrent jurisdiction with the Circuit Courts in actions involving personal property in which the sum is not more than \$250; in South Dakota their civil jurisdiction is limited to certain actions involving not more than \$100. There are usually eight to twelve magistrates in every county. In cities where these courts are established they are convenient for landlords and tenants in settling dispossession cases.

In most cities there are other inferior criminal and civil courts of limited jurisdiction. Sometimes they are called Municipal Courts. Their jurisdiction is about the same as that of the Justices' Courts. Police Courts are maintained in many cities with jurisdiction over misdemeanors—usually violations of city ordinances, such as traffic regulations—and with power to hold preliminary hearings involving felonies.

The Juvenile Court is chiefly a correctional court and is ordinarily supported from local government funds. In many states it is not strictly a court, its sessions being informal. Quite often the County Judge or the Judge of another inferior court is also Judge of the Juvenile Court. The jurisdiction of the court pertains to the care and protection of dependent, delinquent, and neglected children as well as to crimes committed by children which are not punishable by confinement in the state penitentiaries. Newspapers withhold the names of most defendants.

The Court of Domestic Relations, or Family Court, is another correctional court, but with more power to hear and determine cases. It hears cases involving non-support and abandonment, and is usually a court of equity in that it may grant divorce decrees and annul marriages.

A husband was sentenced today to six months in jail for spanking his wife because she bobbed her hair. Judge William Krueger in Family Court held the case constituted "an unwarranted assault."

Mrs. Robert L. Baine told the court her husband flew into a rage when she returned from the barber, grabbed her by her remaining tresses, and violently paddled her with the palm of his hand.

The judge said his own wife had bobbed her hair without his knowledge but he did not "get into court about it."

**Probate Courts.**—The state has always recognized that the heirs and creditors of a decedent and persons claiming to be heirs have rights, and in order to protect their rights and to adjust any possible conflicting claims, has created laws and established special courts.

When a person executes a will and dies he is said to have died *testate*; when he dies and leaves no will he is said to have died *intestate*. The estate of a decedent is seldom in a condition which allows of its immediate division among the heirs. That is to say, because the estate consists of real and personal property which cannot ordinarily be divided equally and equitably, and because there are usually creditors' claims and burial expenses to be deducted before a division can be made, it is necessary that the real and personal property be converted into cash and the creditors' claims paid. To provide for an equitable division and to insure a conservation of the estate in the interest of the heirs

a will usually nominates one or more responsible persons as *executor(s)*.<sup>9</sup> Upon the death of a testate person the executor applies to a state court, usually called a *Probate Court*,<sup>10</sup> asking that the will be admitted to probate. The word "probate" is derived from the Latin which means "to prove." If there are no persons to contest the provisions of the will, it is admitted to probate. That is to say, the court orders that it be transcribed, recorded, and indexed in the official records of the court. The court also requires the executor to furnish bond in the sum of twice the estimated value of the estate; then the court issues to the executor *letters testamentary*, which are credentials needed by him in his subsequent administration of the estate.

When a person dies intestate, one or more of the heirs makes application to the Probate Court for authority to settle the estate, and one or more of them, or some other responsible person or persons, is appointed by the court as *administrator(s)*.<sup>11</sup> The Probate Court issues to the administrator credentials known as *letters of administration*, which are similar to letters testamentary.

The executor (or administrator, as the case may be) proceeds to administer the estate in the interest of the heirs. Sometimes it is necessary for the executor to ascertain the amount of inheritance taxes and property taxes and to pay them to the state; sometimes he must sell a portion of the estate and convert it into cash; sometimes he must advertise for claims against the estate and make the proper settlement with creditors. After a certain duration of time, usually two years, the executor is required to make an accounting to the Probate Court. He is entitled to deduct his necessary expenses and a percentage fee. If the court finds that his accounting is proper and honest, it issues an order for the distribution of the assets among the heirs and "discharges" the executor.

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<sup>9</sup> When a woman is nominated she is called *executrix*.

<sup>10</sup> In New York state this court is called the Surrogate Court. In Georgia it is called the Court of Ordinary. In ten other states it is called County Court. In many states the local courts of original jurisdiction have jurisdiction in probate matters. New Jersey has three divisions of what is usually the Probate Court, namely a Surrogate Court, an Orphans' Court, and a Prerogative Court.

<sup>11</sup> A woman who receives this appointment is called *administratrix*.

*The News Story.*—The newspaper reader is extremely interested in the wills of decedents. In small towns a person with property is scarcely dead before his acquaintances begin to gossip about the amount of his estate and the probable division of it; in most community newspapers all wills are published in full. In cities there is a great interest in the wills of wealthy or prominent persons, and the provisions of important and interesting wills are frequently published on the front pages of the newspapers.

The official who transcribes and indexes wills admitted to probate is ordinarily the *County Clerk*, the *Register*, the *Recorder* or the *Clerk of the Probate Court*.<sup>12</sup> He permits reporters to examine in his office the wills that are each day admitted to probate. Most wills probated in cities are not worth a news story; they are usually published in very brief form in the column devoted to "Statistics" or "Court Briefs." But whenever a newspaper reporter discovers an important or interesting will he copies the provisions and writes a complete news story.

Frequently the point of interest in the news story is the *amount of the estate*. The probable amount may be usually obtained from the application furnished by the executor, who is required to furnish penalty bond in the sum of twice the estimated value of the estate; sometimes the executor appends an inventory of the estate. In some wills the interesting fact is that the estate is extraordinarily large, and sometimes—as in the will of the Supreme Court Justice who left an estate of only \$15,000, and the will of J. Ogden Armour, the meat packer—that the estate is surprisingly small.

In some wills the chief point of interest is the *heirs* or *beneficiaries* who are named; for example, a well-known New York publisher, a bachelor, bequeathed his forty-million-dollar estate to the Metropolitan Museum of Art. In some wills prominent millionaires have disinherited their children. There are also many newspaper readers who have loyalties to certain educational, religious, and eleemosynary institutions and are, therefore, eager to know whether certain philanthropists left bequests

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<sup>12</sup> See Chap. XI.

to "their" church, university, hospital, institute, or foundation. Many persons, too, are eager to know "what will become of" a great newspaper, or circus, or private business which its owner founded or over which he exercised a peculiar, personal management.

Quite often the interesting feature in a will is the *character of the estate*. Sometimes the least eccentric persons own the queerest kinds of personal property, and it is interesting to know about it and to know to whom it is bequeathed. And in this day in America when nearly everybody is an owner of at least a few securities, nearly everybody wants to read the list of stocks and bonds which shrewd, wealthy men owned, because that fact gives some clue as to the value of certain securities. It surprises the public, also, to learn that men thought to be shrewd and rich frequently possess the most worthless securities. Again, certain claims against the estate that are enumerated in the inventory filed by the executor frequently reveal that the estate of a person thought to be wealthy is almost entirely encumbered. Oftentimes, too, there are queer provisions in the will as to the manner in which the bequests shall be put to use by the heirs.

Henry W. Lincoln, capitalist, who committed suicide Feb. 23, left an estate of \$6,000,000, almost twice as large as was estimated at the time of his death, according to an inventory filed yesterday before Daniel G. Ross, clerk of the probate court. His widow, M. Nita de Posci, receives all but \$750,000, his will specifies.

The bequests include \$300,000 to the Art Institute and \$200,000 to the Durand university.

The estate is divided as follows: Bonds, \$1,030,000; stocks, \$2,344,000; real estate, approximately, \$44,000; and chattels, \$20,000.

The inventory discloses that the bulk of his estate was invested in a wide variety of securities. Mr. Lincoln made few purchases of speculative stocks. None of the stocks are listed in the inventory as "bad investments."

Some of the stocks listed are:

1,800 Chicago & Eastern Illinois	\$180,000
1,859 Chicago Transfer Co.	185,000
7,500 Chicago Daily News, Inc.	No par

1,200	General Electric Co.....	No par
896	Commonwealth Edison Co.	89,600
8,334	Nevada Land Co.....	70,839
463	Public Service Co.....	No par
Some of the bonds listed are:		
125	Sanitary Dist. of Chicago...	\$125,000
52	German External Loan, 1924	52,000
44	Paulista Railway Co.....	44,000
42	Board of Education, Cleveland	42,000
62	Chicago & Eastern Illinois.	60,000
30	State of Louisiana.....	30,000
110	Kingdom of Belgium, Ex- ternals .....	110,000
Among the notes and miscellaneous items in the inventory were two notes totalling \$12,640 of Timothy O'Dwyer, Fortieth ward politician.		

Not only is a will news when it is filed for probate, but in many instances the point of interest is the fact that the will is renounced by heirs, or is contested by persons who expected to be heirs or by heirs who hope to receive a larger portion of the estate. The Probate Court hears all contests and its decisions are reviewable in the higher state courts. Sometimes an heir, usually a widow who is entitled to a dower, renounces the will which bequeaths certain property to her because she hopes the dower, which the law provides for every widow, will exceed the amount of her inheritance specified in the will.

The contesting of wills almost always has a value as news because, in the first place, the public is interested in conflicts, and, in the second place, because fraud is frequently charged in connection with the contesting of wills. Sometimes forgery of the whole instrument or the names of attesting witnesses or of the testator himself is charged. Sometimes undue influence upon the testator by certain persons is alleged, and sometimes a second will is presented by contesting parties accompanied by the allegation that it is the "last" will of the testator. In some cases these charges are discovered to be true, indictments are returned, and the contest suit has a sequel in the criminal courts.

Probate Judge James Trueblood yesterday denied both claims of Ernest Murphy, ex-convict, to the estate of the late Barton W. Burns, multimillionaire recluse.

The court ruled that there was no

evidence to support Murphy's assertion that he was Burns' son by a secret marriage. The judge also found against Murphy's contention that a lost or stolen will named him sole beneficiary of the estate, estimated as high as \$9,000,000.

The decision gives the fortune to two second cousins of Burns. They are Mrs. Boyce D. Wilson, Erie, Penna., and Edward B. Burns, Chicago.

A dramatic climax to the week's trial took place in the session yesterday when Attorney Martin B. Doak, representing the cousins, brought the tombstone into court from what was said to be the grave of Murphy's mother, Jennie Mallott. The inscription on the stone read "Jennie M. Burns, Mar. 12, 1869—Aug. 2, 1886."

Alexander Costigan, sexton at Ottawa, Ill., testified he explored below the stone last week and found no grave. He added that the marker was put in the cemetery last spring, and that he saw Murphy taking pictures of it. The rear of the stone showed it had once marked the grave of one "Rowena Johnson."

Attorney Doak, who contended that Murphy had invented his claims of the Burns estate while an inmate of the Missouri penitentiary, introduced testimony earlier in the day tending to cast doubt on whether a Jennie Mallott ever existed.

The Rev. O. M. Cox, pastor of the Baptist church at Ottawa, produced records of his church showing that the woman Murphy named as his maternal grandmother had given birth to a child two months before the date Murphy gave for the birth of his mother. Murphy's story was that his mother died at childbirth in 1886, at the age of 14, and that her relative, Mrs. Orville Murphy, of Ashtabula, Ohio, reared him as her own son in order to hush scandal.

John Edelmann, star witness for Murphy, was arrested last night on orders of Judge Trueblood and must show cause Saturday why he should not be sentenced for contempt of court.

Judge Trueblood found, he said, that the letters introduced by Edelmann in the trial, were signed with a rubber stamp of Murphy's signature and that the post office cancellation marks on the envelopes had been drawn with pen and ink.

<p>Following Judge Trueblood's announcement of his ruling against Murphy, Attorney Frank Wilson, representing Murphy, gave notice of appeal to the Circuit Court.</p>
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Procedure in probate courts when contests are being heard is quite like the procedure in other courts. Oftentimes, however, the testimony is of such a technical nature that it is not worth reporting. The newspaper reporter would do well to inform himself about the basic legal rules and to become acquainted with the legal terminology relating to the estates of decedents.<sup>13</sup>

**Appellate Courts.**—In every state is established a court which has the power to review cases on "appeal and error" from the courts of original jurisdiction. This court sits in the state capitol. It is the court of last resort. The name of the highest court in Kentucky, Maryland, New York, and the District of Columbia, is the *Court of Appeals*; in Delaware and New Jersey it is the *Court of Errors and Appeals*; in Virginia and West Virginia it is the *Supreme Court of Appeals*; in Connecticut it is the *Supreme Court of Errors*; in Maine and Massachusetts it is the *Supreme Judicial Court*; in all other states it is the *Supreme Court*.

Although this highest appellate court also has original jurisdiction in the issuance of certain writs, which are explained in Chapter VI, its principal work is hearing cases appealed from the courts of original jurisdiction. It is the decisions of appellate courts which constitute the major part of common law.

In order to relieve the docket of the highest appellate court thirteen states have established *intermediate appellate courts* to review the less important appealed cases. The names of these courts are confusing and are almost as numerous as the different states which have established them.

The decisions of the state and federal appellate courts and the federal District Courts<sup>14</sup> are reported in series of volumes for the convenience of judges and practicing attorneys. Because newspaper reporters often have need to refer to court

<sup>13</sup> Some of the more important terms are defined in the Glossary, Appendix II.

<sup>14</sup> *Infra*, p. 36.



decisions they should understand the system of law "reporting." The bound and printed decisions of each state appellate court are referred to by the name of the state; for example, the "Wisconsin Reports."<sup>15</sup> In a few states the reports of the intermediate appellate courts are also reported, and are published in separate volumes.<sup>16</sup> Because the ordinary attorney cannot afford to own a set of reports from every state in the union the decisions of several states are issued in eight unofficial regional "reporters." The names are: *Northwestern Reporter*, *Southern Reporter*, *Atlantic Reporter*, *Pacific Reporter*, *Southwestern Reporter*, *Southeastern Reporter*, *Northern Reporter*, and *Eastern Reporter*.

Decisions of the United States Supreme Court are officially reported in a series called the *United States Reports*; a series of unofficial reports is called the *Supreme Court Reporter*. Decisions of the federal District Courts and the Circuit Courts of Appeals are reported in the *Federal Reporter*. Whenever cases are cited the name of the case is given, then the number of the volume, then the abbreviated name of the report, and finally the page number; for example:

Dillon v. Linden, 36 Wis. 344.

United States v. Kirby, 74 U. S. 482.

Park v. Detroit Free Press, 40 N. W. 731, 72 Mich. 560.

*Summary.*—In general, there are four kinds of state courts: (1) Courts of original jurisdiction in which most of the litigation and criminal prosecutions are heard and determined. They are the courts from which newspapers obtain the most news. (2) Inferior local courts of original jurisdiction; (3) Appellate and intermediate appellate courts; (4) Probate courts.

<sup>15</sup> The earlier reports in some states bear the name, not of the state, but of the editor or compiler who reported them; for example, the first volumes of the Massachusetts reports are known as "Metcalf," and the first volumes of the United States Supreme Court reports are known as "Cranch."

<sup>16</sup> For example, the decisions of the Court of Chancery of New Jersey are reported in the *New Jersey Equity Reports* and the decisions in cases at law of the Court of Errors and Appeals and the decisions of the Supreme Court (an intermediate appellate court) are reported in the *New Jersey Law Reports*; numerous other cases in the various courts of the state are reported in the *New Jersey Miscellaneous Reports*. Most states, however, report only the decisions of the highest appellate court.

The work of the courts of original jurisdiction is sometimes divided into branches in order that special cases, such as criminal, equity, etc., may be tried in each. The most common name for these courts is *Circuit Courts*.

The names of courts have little significance. One must learn to associate the name of a court with its jurisdiction much as one learns the gender of Latin, French, or German nouns. Some of the names of courts not hitherto mentioned are Small Claims Court, Court of Oyer and Terminer, Recorder's Court, Court of Criminal Appeals, Commissioner's Court, Corporation Court, Criminal District Court, Intermediate Court, Court of Special Sessions, Land Court, and Quarterly Court.

#### FEDERAL COURTS

A distinctive principle of the American system of government is that of "local self-government." When the American Constitution was drafted to replace the Articles of Confederation certain powers were "delegated" to the federal government and written into the Constitution. All other powers of government were "reserved" to the individual states. Consequently the state courts transact most of the judicial business of the American people. Nearly all crimes are prosecuted in the state courts and almost all private litigation is heard and determined by the state courts.

Nevertheless, by the very nature of the Constitution, certain kinds of crimes must be prosecuted, and certain kinds of private disputes must be litigated, in the federal courts. That is to say, the United States courts have jurisdiction over subject matter and jurisdiction over the person that is distinct from that of the state courts.

**Criminal Jurisdiction.**—Crimes prosecuted in the federal courts are, generally, of two kinds: (1) those involving a fraud against the federal government; and (2) those that are in direct violation of various federal penal statutes.

Any fraud against the federal government, such as the embezzlement of the funds of the government or of national banks, counterfeiting money or bonds, or the evasion of customs duties, is prosecuted in a federal court. Likewise, any

fraud against a private person in which use is made of the United States mails is a crime against the federal government.

All of the crimes prosecuted in the federal courts, however, are those committed in violation of the federal statutes; for common law crimes are against a state. In recent years the federal statutes have prescribed new crimes which, in many other countries, are not recognized as crimes at all. Such crimes are violations of the Anti-White Slavery Act, the acts forbidding the operation of lotteries, and the National Prohibition Act. The most common crimes and misdemeanors prosecuted by the federal government are discussed on page 206 in connection with the duties of the United States District Attorney, who is entrusted with their prosecution.

**Civil Jurisdiction.**—Briefly, the civil jurisdiction of United States courts is as follows:

1. *Cases Arising under the Constitution.*—The tendency in recent years is for many litigants, defeated in the highest state court, to appeal to the United States Supreme Court on the ground that they have been deprived of their constitutional rights. The fourteenth amendment to the constitution provides that no state shall deprive "any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

2. *Civil Cases Arising under the Federal Statutes.*—The most numerous of these civil cases are those dealing with patents, copyrights, and registered trade-marks. Although the federal statutes define infringement of patents or copyrights as a misdemeanor and provide a fine of from \$100 to \$1,000 for infringement, it is necessary for a person or corporation whose patent or copyright has been infringed to sue for compensatory damages in order to secure adequate redress. And since the rules of equity operate in federal as well as in state courts, persons and corporations frequently institute preventive proceedings in connection with patents and copyright litigation.

3. *Cases Arising under Treaties.*—Because a treaty is as much a part of the law of the land as are statutes, the federal courts have power to interpret treaties. Private interests which

believe that certain treaties result in injury to them often apply to federal courts for relief. For example, the Neptune Association of Masters and Mates, declaring that vessels flying the American flag were being damaged because passengers preferred to travel on British ships in order to obtain liquor beyond the three-mile limit, applied to a federal District Court in New York, asking an injunction to restrain British ships from bringing liquor under seal into United States ports under the provisions of the American treaty with Great Britain. The plaintiffs asked that the treaty be declared unconstitutional, but it was upheld; the Supreme Court of the United States has never held a treaty unconstitutional.

4. *Cases in Which the United States Is a Party.*—These cases, too diverse to mention all of them, include suits brought in the federal District Courts against the Alien Property Custodian and similar suits authorized by act of Congress. Many other suits, also, are brought against the government in such special courts as the Court of Claims, the Court of Customs Appeals, and the Board of Tax Appeals.

5. *Controversies between States.*—In order that there be impartiality, the federal courts have jurisdiction in controversies between states. Boundary disputes and the recent controversy over the water level of Lake Michigan are typical examples.

6. *Cases between Citizens of Different States.*—These suits constitute the principal part of the private litigation in the federal courts. The development of interstate commerce has increased the number of private litigations enormously; corporations, such as life insurance companies, have thousands of business relations in every state in the union. A corporation is presumed to be a citizen for the purposes of litigation, and is a citizen of the state in which it is chartered.

Frequently suits filed in a state court are "removed" to a federal court in order that the litigants may gain certain advantages. In many cases the federal and state courts have concurrent jurisdiction. The law applied in the federal courts is not necessarily federal law; it may be the law of either one of the states of which the parties to the suit are citizens, or the law of a different state, say, one in which the property involved in the suit

is located. Because many firms scattered throughout the United States are involved in bankruptcy proceedings, the administration and adjudication of bankruptcy is, generally, a federal function and accounts for a large number of the civil actions in federal courts.

7. *Other cases* within the control of the federal judiciary are: (a) cases in which ambassadors and ministers and consuls of foreign countries are parties to the suit; (b) cases of admiralty and maritime jurisdiction; (c) cases in which citizens of the same state are parties to a suit involving land claimed under grants of different states; (d) cases in which a state or its citizens and a foreign state or its citizens and subjects are parties to a suit.

**Federal District Courts.**—Congress has established eighty-three District Courts in the United States, some states being divided into two or three judicial districts. The District Courts have original jurisdiction in all cases in which the federal judiciary system has jurisdiction.<sup>17</sup> Court is held in the principal city of a district and also in one or more other cities in the district. A regular term is fixed by law for each session and special terms may be called by the Judge. The court is always available for equity and admiralty cases in which quick legal relief may be necessary to a party.

The District Court hears a docket of criminal cases which a federal grand jury has recommended for trial. A petit jury determines the facts in all criminal cases and may be used for the same purpose in civil cases at the choice of the suitors. The sessions of federal District Court are more formal than the sessions of many state courts, but notwithstanding, they have lost prestige in recent years because of the innumerable criminal cases which come before them in connection with the violations of new federal statutes, such as the National Prohibition Act. To preserve the dignity and to conserve the time of the federal District Court it has been recommended that inferior federal courts, similar to Police and Justices' Courts, be established to try petty crimes and misdemeanors.

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<sup>17</sup> Except that the Supreme Court has original jurisdiction in cases affecting ambassadors and the ministers and consuls of foreign states.

The procedure in federal District Courts is quite the same as in state courts, and state law and common law are applied as well as federal law. Amendments to the judicial code made in 1912, 1922, and 1925, have greatly improved federal judicial procedure.

**Federal Appellate Courts.**—An arrangement of federal courts in the order of their authority would place the Supreme Court first, the Circuit Court (s) of Appeals second, and the District Courts last. In addition, are special courts, namely, the Court of Claims and the Court of Customs Appeals.

The Supreme Court sits at Washington and has a bank of nine justices. The cases which come to it for review originate in the federal District Courts and the state courts; sometimes cases which have originated in the federal District Courts and the state courts are appealed, first, to the Circuit Court of Appeals, and then to the Supreme Court. Ordinarily, however, the appellate decisions of the Circuit Court of Appeals are final. Most of the cases originating in the state courts and afterward carried directly from the highest state court to the Supreme Court are on writ of certiorari.<sup>18</sup> The practice of reviewing, on error and appeal, cases previously determined by the highest state courts was abolished by the provisions of the Judiciary Act of 1925, except in a few instances.

Washington newspaper reporters are the only reporters who come in direct contact with the Supreme Court, but the Circuit Court of Appeals sits in sixteen different cities. There are nine circuits.<sup>19</sup>

From two to three judges comprise the bench of the Circuit Court of Appeals. Each of the nine Supreme Court justices is assigned to a circuit but none of them ever sits with the court. The other judges are district judges within the circuit and the regular circuit judges. The judges called to sit on the bench of the Circuit Court of Appeals do not consider cases which they

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<sup>18</sup> See p. 172 ff.

<sup>19</sup> Sessions are held in the following cities: 1st circuit, Boston, San Juan, P. R.; 2d circuit, New York City; 3d circuit, Philadelphia; 4th circuit, Richmond, Va., Asheville, N. C.; 5th circuit, New Orleans, Atlanta, Montgomery, Fort Worth; 6th circuit, Cincinnati; 7th circuit, Chicago; 8th circuit, St. Louis, Kansas City, Omaha, St. Paul; 9th circuit, San Francisco; 10th circuit, Denver, Wichita, Oklahoma City.

have previously heard. There are thirty active circuit judges. Formerly there was a United States Circuit Court, but it was abolished by Congress in 1912. The office of Circuit Judge, however, was not abolished and the circuit judges are still appointed to sit as a part of the Circuit Court of Appeals.

Newspaper reporters in cities in which the Circuit Court of Appeals does not sit ought nevertheless to know something about the court because it hears cases appealed from their districts. Newspaper reporters in cities in which the Circuit Court of Appeals regularly sits act as correspondents for newspapers in cities in which the court does not sit, keeping them informed regarding cases appealed from the local District Court. Newspaper reporters in cities in which the court does not sit may obtain from the Clerk of the local District Court copies of the opinions rendered in appealed cases a few days after the decisions have been announced in the Circuit Court of Appeals; frequently these opinions are worth printing in full in the local newspaper. In important local cases the reporter ought to write a review of the case from the time it was filed in the local federal District Court or the state court until the time it was decided in the Circuit Court of Appeals.

The appellate jurisdiction of the federal courts is, with a few exceptions, as follows:

Circuit Court of Appeals—(1) Jurisdiction to review final decisions in the District Courts in all cases save where direct review may be had in the Supreme Court under section 238 of the Judicial Code. (See Supreme Court jurisdiction below.) (2) Jurisdiction to review interlocutory orders or decrees of the District Courts in proceedings for injunctions and receivers. (3) Jurisdiction to review decisions of the District Courts sustaining or overruling exceptions to awards in arbitration as provided in section 8 of an act providing for mediation. (38 Stat. at L. 103, 107.) (4) Appellate and supervisory jurisdiction under sections 24 and 25 of the Bankruptcy Act.

Supreme Court—(1) From Circuit Court of Appeals: (a) Issues writs of certiorari to the Circuit Court of Appeals and the Court of Claims in any case, civil or criminal, requiring the cause to be sent up for determination; (b) reviews, on writs of error and appeal, from the Circuit Court of Appeals, cases in which there is drawn in question the validity of a statute of any state on the ground of its being repugnant to the constitution, treaties, or laws

of the United States, and in which the decision is against its validity. (2) From District Courts: (a) Certain suits brought by the United States under the antitrust or interstate commerce laws, etc.; (b) reviews, on writ of error, in certain instances, criminal cases where the decision of the District Court is adverse to the United States; (c) reviews so-called "three judges" cases in which an injunction is granted to suspend the enforcement of the statute of a state or of an order made by an administrative board or commission created by and acting under the statute of a state; (d) reviews judgments and decrees in suits to enforce, suspend, or set aside orders of the Interstate Commerce Commission other than for the payment of money; (e) reviews judgments and decrees entered in suits relating to section 316 of an act to regulate interstate and foreign commerce in livestock, etc. (42 Stat. at L. 159, 168.) (3) From the highest state courts: (a) Reviews, on writ of error, judgments and decrees in suits in the highest state courts where there is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is against their validity, or where there is drawn in question the validity of a statute of, or an authority exercised under any state, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision is in favor of their validity; (b) reviews by certiorari any of the subjects mentioned in (a), and cases where any title, right, privilege, or immunity is claimed under the constitution, or any treaty or statute of, or commission held, or authority exercised under the United States.<sup>20</sup>

#### OFFICERS OF THE COURT

**The Judge.**—The chief official of a court is the *Judge*. He is, in fact, the court. All other officials of the court, including the attorneys formally admitted to practice in his court, are his servants or assistants. The Judge rules his court almost arbitrarily and is responsible to no person and to no body except a higher court—where there is a court higher than his own. The principal functions of the Judge are to decide all points of law, to rule on the admissibility of evidence, to instruct the jury as to the law, to excuse jurors from service, to decide the order in

<sup>20</sup> For a complete statement of the present jurisdiction of the federal appellate courts, see sections 1120, 1144, 1214, 1215, 1216, and 1217 of the U. S. Compiled Statutes, and F. Frankfurter and J. M. Landis, *The Business of the Supreme Court*, Chap. VII.



which cases will be heard, to pronounce final judgments and sentences, and to admit criminal defendants to probation. The Judge rules his court by means of *orders*, some of them verbal, some of them written. He sometimes issues orders upon his own initiative but usually upon the motion of an attorney. Most of the orders issued by the Judge are formal and written, such as orders to "show cause" and *writs of attachment*. His verbal orders, however, are also authoritative, and disobedience of them constitutes contempt of court; the Judge may, for example, cite for contempt a recalcitrant witness, a disorderly spectator, an attorney who acts without decorum during the course of a trial, or a newspaper reporter who subjects the administration of justice to indignity or ridicule. Some judges are temperamentally unfit for holding an office to which so much arbitrary power attaches and some judges are politicians who take advantage of their position to obtain the publicity that is so indispensable to the candidate for office; generally, however, the American judiciary does not conduct itself capriciously and is entitled to the respect which a proper administration of justice demands. Newspaper reporters should be slow to condemn the apparent caprice of a judge, remembering that in the public mind dignity ought to attach to the judicial office even though it does not always attach to administrative office.

**The Clerk.**—Next to the Judge, the *Clerk* is the most important official of the court. Although court recesses at frequent intervals, the office of the Clerk is open every day. All applications and motions addressed to the court by parties are made formally in writing and given to the Clerk for record. The Clerk preserves all preliminary pleadings until they are to be used in the formal trial. In collaboration with the Judge, he prepares the docket and trial calendar, and during the course of a trial records all motions made in court and prepares and records all orders issued by the Judge. The Clerk, also, receives all moneys paid into court, such as fines assessed upon criminals, damages awarded in judgments, and alimony awarded in divorce decrees. The Clerk is the official with whom the newspaper man has most intimate contact. The reporter not only examines the preliminary pleadings filed in the office of the

Clerk, but, during the course of a trial, consults the Clerk or the Clerk's records to obtain information about the pending case. It is well for the reporter to make a friend of the Clerk and his assistants, for frequently the reporter can obtain information from no other source than them.

**Other Officers.**—The *Bailiff* is a sort of sergeant-at-arms of the court. He announces the opening of court, keeps order in the court room, calls witnesses to the stand, ushers jurors to and from the jury room, and acts as a messenger for the court. Usually there is more than one Bailiff attached to a busy court. In many jurisdictions deputy sheriffs act as bailiffs.

The *Court Reporter* is a stenographer licensed by the court to take the testimony of witnesses and to prepare from his notes a transcript of the evidence, usually referred to as the *record*. Although an official of the court, the Court Reporter receives his compensation chiefly from selling copies of the transcript to the parties engaged in the trial. In important trials, the newspapers frequently pay the Court Reporter to furnish them with a part or all of the record. Usually two or more court reporters are authorized to take verbatim testimony in a court, and they work in shifts. Because of this fact the newspapers can usually arrange to have the court reporters supply them with portions of the transcript at frequent intervals.

The *jury commissioners*—there are usually three—make up the jury lists for each term of court or for special venires. In some jurisdictions there is a *Trustee of the Jury Fund* appointed by the Judge to receive and pay the fees of jurors. In many jurisdictions the Judge appoints court commissioners and masters to assist him during the preliminary stages of particular trials; their duties are discussed on pages 139 and 140. The Sheriff, in most jurisdictions, is also an officer of the court in the sense that he summons jurors, subpoenas witnesses, serves writs of attachments upon property, and arrests criminals.

Another assistant to the Judge in some courts is the *Friend of the Court*. He is appointed in the Court of Domestic Relations to recommend to the Judge settlements of domestic disputes; he is usually a licensed attorney who understands social welfare problems. Sometimes, also, in suits involving questions with

which the Judge is not especially familiar an attorney or another Judge who has special knowledge of the particular legal questions at issue is requested to advise the Judge as a Friend of the Court.<sup>21</sup>

### EXERCISES

1. Identify the following cases as cases at law or cases in equity:
  - (a) C sues the News Publishing Company, a newspaper, to recover damages for the publication of a news story which he alleges libeled him.
  - (b) X petitions the court for an injunction to restrain the State Insurance Commission from inspecting his business records.
  - (c) The News Publishing Company petitions the court to enjoin the Star Publishing Company from entering into a contract with the City of Erewhon to publish the city's legal advertising for one year. The court, in order to render a decision, must decide whether the paper published by the Star Publishing Company is (1) a newspaper or an edition of a newspaper; and (2) a newspaper of general circulation.
  - (d) Mrs. A sues Mr. A for a divorce decree. (*Cf. Cast v. Cast*, 1 Utah 112.)
2. Prepare an outline or chart of the courts in your state, defining the jurisdiction of each.
3. Look up the following cases in the University Law Library and prepare a paper giving the title and court for each case:

284 Fed. 899	170 N.W. 668	97 N.J. Eq. 126
284 Fed. 823	268 U.S. 388	99 N.J.L. 68
251 Fed. 715	268 U.S. 652	109 So. 648
284 Fed. 707	45 Sup. Ct. 625	162 Pac. 1112
127 Atl. 693	286 S.W. 1047	134 S.E. 859
122 Atl. 595	198 Iowa 1238	189 Wis. 84
200 N.W. 642	185 Wis. 148	204 Mich. 459

4. Look up the following federal statutes and state the popular name of each:

41 U.S. Stat. 305	36 U.S. Stat. 825
38 U.S. Stat. 114	30 U.S. Stat. 364

<sup>21</sup> The term "Friend of the Court" is used in a third connection. When a person who is not a party to a suit but who nevertheless desires to serve the public interest by helping to interpret an issue, is permitted to introduce evidence in a suit or to file a brief, he is referred to as a Friend of the Court (*amicus curiae*).

5. Assuming that the civil court in your city requires three different judges to hold court at the same time in three different court rooms, what method would you adopt in order to cover all of them thoroughly?
6. Distinguish between the fifth and the fourteenth amendments to the federal constitution in respect of the clause guaranteeing life, liberty, and property.
7. Explain why prohibition agents accused of killing citizens while on duty are tried in federal rather than in state courts.

## CHAPTER III

### PRELIMINARIES TO CRIMINAL TRIALS

CRIME, as distinguished from tort, or civil injury, is a general term which refers to all infractions of the criminal law. Although to the layman the connotation of the word is that of a serious violation of the law, crime includes both *felonies* and *misdemeanors*. Neither felony nor misdemeanor has a precise meaning except when defined by statute, but felony implies a serious or atrocious crime, such as larceny or homicide, whereas misdemeanor implies some milder crime, such as violation of a traffic ordinance. In general, a felony is punishable by confinement in a state penitentiary and a misdemeanor is punishable by fine or imprisonment in a local jail.

### KINDS OF CRIMES

Jurists take notice of two kinds of crime, namely, *malum in se*, or a wrong in itself, and *malum prohibitum*, or an act that is wrong merely because it is forbidden by law. Legislative bodies sometimes declare certain acts to be criminal which are not everywhere considered criminal and which formerly were not regarded as criminal. Consequently, in classifying crimes for the purpose of differentiating them, one cannot rely upon the mere statutory names. When one reads in indictments that a person is charged with such and such a crime, the name of the crime is merely a quotation from the statute which forbids the crime. Some of the statutory names of crimes are trespassing, stuffing ballot boxes, fleeing from justice, child desertion, operating a game of chance, disturbing the peace, altering records in a public election, drunkenness, illegally possessing whiskey, fraud, suffering a game on (his) premises, committing a public nuisance, blackmail, maintaining a disorderly house, and extorting money.

But these names of crimes, though ordinarily used in indictments and warrants, offer no clue to a real differentiation of crimes. The common law names of crimes, however, define them more precisely. One classification of common law crimes differentiates five kinds; namely, crimes against the person, crimes against the habitation, crimes against property, crimes against the public welfare and the peace, and crimes against public justice and authority.

**Crimes Against the Person.**—Eight different crimes against the person are distinguishable in law. (1) There is *simple assault*, which is merely threatening another by doubling the fist, or any similar attempt to do bodily harm to another. (2) When the threat is violent enough to cause another to flee it constitutes *aggravated assault*. (3) When the victim is actually struck by an assailant the attack constitutes *battery*; it has been held that spitting on another and striking a rider's horse constituted battery. (4) When an officer unlawfully restrains the liberty of a citizen by placing him in confinement the attack constitutes *false imprisonment*. (5) When a private citizen, not an officer, forcibly detains another person or bears him away against his will the crime is *kidnapping*; unlike the four crimes mentioned above, which are misdemeanors, kidnapping is a felony. (6) If, in the course of an assault and battery of another, the attacker disables or dismembers his victim the crime is *maim* (or *mayhem*); for example, to knock out another's teeth or to cut off another's ear or finger is maim. (7) When a man has unlawful carnal knowledge of a woman forcibly and against her will the crime is *rape*. (8) The gravest of the crimes against the person is *homicide*, that is, the killing of a human being by a human being. For the charge of homicide to lie, the victim must have died within one year and one day after the fatal injury was inflicted. Homicide has various lay names differentiated by the personal relation of the slayer and the victim, such as *fratricide* (killing one's brother), *matricide* (killing one's mother), and *uxoricide* (killing one's wife). There are two kinds of homicide recognized in law, namely, *justifiable* homicide and *felonious* homicide. Homicide is said to be justifiable when it is committed in self-defense or in line of duty.

Felonious homicide is either *murder* or *manslaughter*. Murder is defined as homicide "with malice aforethought"; manslaughter consequently, is homicide without malice aforethought.

*Manslaughter*.—Manslaughter is either *voluntary* or *involuntary*. Voluntary manslaughter is homicide committed intentionally in the heat of passion or as the result of extreme provocation; for example, a husband who surprised his wife with an adulterer and killed the adulterer was held to have committed voluntary manslaughter. Involuntary manslaughter is accidental homicide, such as that resulting from reckless driving, from the discharge of an "unloaded" gun, from poison administered by mistake for medicine, or some other form of criminal negligence.

*Murder*.—Murder is of two degrees which are differentiated by statute.<sup>1</sup> Common law takes no notice of degrees of murder, but statutes differentiate on the ground of expressed and implied malice. In first degree murder there is an expressed malice and premeditation, such as murder committed by lying in wait or murder accompanying the commission of a serious crime, such as burglary. In second degree murder there is no premeditation but nevertheless an intent to kill at the moment or an attempt to inflict an injury without caring whether it causes death or not. For example, a man was convicted of second degree murder because of his reckless disregard of another's life: utterly drunk, he fired a revolver through a plate glass window at a stranger and killed him.<sup>2</sup>

*Penalties*.—A manslaughter verdict ordinarily involves a sentence of from one to ten years in prison. Second degree murder is usually punishable by a sentence of from fourteen years to life imprisonment; for example, the man mentioned in the foregoing paragraph as having shot through a window, killing a stranger, was sentenced to sixteen years imprisonment. In most

<sup>1</sup> A few states differentiate third degree murder, and statutes in New Mexico define five degrees, the latter two, however, corresponding to manslaughter definitions in most states.

<sup>2</sup> The first man ever to be convicted of second degree murder as the result of a fatal auto accident was sentenced in Milwaukee in 1924; his disregard for the life of others resulted in the death of three persons; and he was sentenced to serve fourteen years in the state penitentiary. Was the fact that he was convicted on a charge of second degree murder a good news story?

states first degree murder is punishable by either a life sentence or death; in New York the only penalty for first degree murder is death in the electric chair; in several states the death penalty has been abolished and the most severe sentence is life imprisonment. Sometimes jurors decide that a defendant is guilty of second degree murder but, contrary to the statutes, recommend the sentence that is reserved for manslaughter cases. Jurors also, in hearing evidence in cases which involve a foul murder but in which there is a reasonable doubt that the defendant charged with the murder was actually the murderer, are so indignant that they sometimes compromise by returning a verdict for manslaughter. Obviously, the jurors in such cases should find the defendant either guilty of murder or "not guilty."

**Crimes against the Habitation.**—The two common law crimes against the habitation are *burglary* and *arson*. The common law definition of burglary is the breaking and entering of the dwelling house of another in the night time, with intent to commit a felony therein. The statutes, however, have extended the definition to include the breaking and entering of shops, warehouses, railroad cars, and vessels. The terms "breaking" and "entering" have a technical meaning; connivance with a servant to gain entry has been interpreted as "breaking," and boring a hole in the floor of a granary in order to steal grain has been interpreted as "entering."

**Arson**, in common law, is the malicious burning of the house or other buildings of another. Statutes in some states differentiate degrees of arson, making distinctions as to whether the act was committed in the night time or daytime, and whether the house was a dwelling or outhouse, and whether the house belonged to another or was the defendant's own house burned by him in an effort to defraud an insurance company.

**Crimes against Property.**—The law recognizes seven different crimes against property, some of which are statutory and some common law crimes.

1. *Larceny*, a common law crime, is taking and converting to use the property of another with felonious intent. Statutes differentiate *grand larceny* and *petit (petty) larceny* by the value of the goods stolen. In Vermont for a charge of grand



larceny to lie the value of the goods must be seven dollars; in California the value must be fifty dollars.

2. *Robbery*, which is a crime against both the person and property, is an aggravated form of larceny. The charge of robbery lies whenever the thief exercises violence on the person of the victim or puts the victim in fear in order to take and convert his property. The property may be taken either from the victim's person or in his presence.

3. *Embezzlement*, a statutory crime, is a form of larceny executed by means of a breach of confidence. In embezzlement the property is not taken away from another but was already in the embezzler's possession through reason of the trust placed in him by the owner of the property, and is converted to the use of the embezzler. Statutes had to be passed to define this form of larceny because the common law definition of larceny did not provide for such an instance.

4. *Receiving stolen goods* is a statutory crime. The receiver of stolen goods is guilty whether he receives the goods in order to sell them for a profit or a fee, or whether he intends merely to conceal the goods and the theft. The underworld term for a professional receiver of stolen goods is "fence."

5. *Forgery* is altering or falsely making a piece of writing for profit or for the deception of another. A person is guilty of "uttering" a forgery when he offers a forged instrument regardless of whether it is accepted by the other party or not.

6. *Obtaining by false pretenses*, a statutory crime, is committed by one who designedly by false pretense obtains goods or money from another with intent to defraud the other. The statutes forbidding such a crime do not provide punishment, for example, of a salesman who expresses too high opinions of the goods he is selling to a possible buyer, but of persons who deliberately misrepresent facts, such as a civilian who, by dress and words, pretends to be an ex-soldier, or a married man who pretends to be single and promises to marry a woman other than his wife in order to obtain her property.

7. *Malicious mischief* is a form of crime against property which ranges from the malicious killing of animals belonging to another to malicious mutilating and defacing of property.

**Crimes against the General Welfare.**—There are numerous crimes against public safety, morals, health, and comfort, but they have little relation to each other. (1) *Bigamy*, that is, knowingly contracting a second marriage while the first marriage is undissolved, is a crime against public morals. (2) In the same category are the numerous *sexual crimes*, such as adultery, incest, seduction, sodomy, and fornication. (3) Likewise, *indecenty* is a crime against public morals; indecenty means many things, but especially the public exposure of the person. (4) *Miscegenation*, or marriage between persons of different races, is a statutory crime in several states and is regarded as an offense against morals and public safety. (5) *Criminal libel*, or the malicious defamation of either the dead or the living, is a crime against the peace and public safety; criminal libel is different from civil libel in that it not only injures a private person but provokes public hatred and disturbance of the peace. Other crimes against the peace and public safety are these: (6) *Breach of the peace*, such as shooting a gun within the city limits or being boisterously drunk; (7) *affray*, or when two persons fight in a public place to the terror of the public; (8) *riot*, or a tumultuous disturbance of the peace by three or more persons assembled of their own authority.

**Crimes against Justice and Authority.**—Three crimes against justice and public authority need no definition. They are: (1) *Obstructing an officer in performance of his duty*; (2) *breaking prison*; and (3) *rescuing a prisoner*. (4) *Compounding a felony* is the crime of taking a reward for forbearing to prosecute a felony; as where a person takes back stolen property upon an agreement not to prosecute the thief. (5) *Perjury* is giving false testimony under oath in a judicial proceeding or in an affidavit, deposition, or tax return. (6) *Subornation of perjury* is the procuring of another to give false testimony. (7) *Bribery* is receiving or offering an undue reward to any person whose business or profession is connected with the administration of justice (including jurors), or to voters or governmental officials, to influence them to act contrary to their duty, or dishonestly. (8) *Embracery* is an attempt unlawfully to influence a jury. (9) *Contempt* is a

crime against justice and public authority; it is so important to the newspaper man that the section below is devoted to a discussion of it.

*Contempt.*—Contempt is the willful disregard or disobedience of public authority. For example, to refuse to answer questions on the witness stand or in depositions, to make a disturbance in a court room, or to comment upon judicial decisions in a manner calculated to destroy public confidence in the courts, constitute contempt. Contempt of court or contempt of Congress or of state legislatures may be punished by fine or imprisonment.

Contempt may be either *civil* or *criminal*. A civil contempt is not against the dignity of the court but against a private litigant in whose interest the court has issued an order; it is punishable by fine. Criminal contempt is an offense against the court and is punishable by fine or imprisonment. The following news story illustrates the difference between civil contempt and criminal contempt: \*

D. D. Markham, operator of radio broadcasting station WURM, was cited by Judge Maxwell Lilly in Circuit court today to show cause why he should not be punished for contempt of court. Mr. Markham was named in two petitions, one alleging civil and the other criminal contempt.

The petition alleging civil contempt recited that the respondent violated an injunction restraining him from broadcasting on a wave length of 315.6 meters. The injunction had been granted last Thursday on application of station WARP.

The charge of criminal contempt was based on advertisements published by Markham in which he is said to have sought to give a false and misleading construction to the opinion of Judge Lilly by reviewing it unfairly.

R. Bascom Jones, attorney for station WARP, submitted the petitions to Judge Lilly and the latter acquiesced in the request that the latter be cited.

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\* For other cases of civil contempt, see *Cline v. Whitaker*, 129 N. W. 400; *State ex rel. Gehrz*, 189 N. W. 451; *Gompers v. Buck's Stove and Range Co.*, 221 U. S. 418, 31 Sup. Ct. 492.

Contempt is also classified as *direct* and *constructive*. *Constructive contempt* is sometimes called *consequential* and *indirect* contempt. The distinction is that direct contempt is presumed to have been committed in the presence of the court whereas constructive contempt is presumed to have been committed outside the presence of the court, as for example, ridicule of a Judge by a newspaper and intimidation of a witness by an attorney for the adverse party.

It is a grave crime to hold courts in contempt or ridicule; some newspaper editors who have gone too far in criticizing the conduct or decisions of judges, and some reporters and photographers who have falsely reported cases or disregarded the Judge's instructions as to decorum in the court room have been punished. A newspaper man may offend the dignity and honor of the court in two ways. He may report a pending case or comment upon it while it is pending in a manner calculated to influence the decision of the court, or he may report a pending case or comment upon a case, either pending or determined, in a manner that holds the court up to ridicule or distrust in the public mind. The newspaper man ought, therefore, to have a knowledge of certain technicalities, namely, what constitutes authorized comment, when a case is pending and when it is actually determined, what constitutes dignified and fair reporting, and what manner of decorum consistent with dignity ought to be observed in the court room. It is not possible to know exactly the real extent of the freedom that newspapers may exercise in these respects except by reading the decisions in the principal contempt cases in which newspaper men have been involved.<sup>4</sup>

But even with this knowledge, the newspaper man is sometimes in danger of being cited for contempt of court because of the caprice and egotism of particular judges. The present tendency is for judges to extend their power unreasonably and beyond the bounds justified by the theory of contempt. The

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<sup>4</sup> Notably: *Toledo Newspaper Company v. U. S.*, 274 U. S. 402; *Haines v. District Court of Polk County*, 202 N. W. 268; *Ex parte Harold Elliston, et al.*, 35 Atl. 312. A comprehensive discussion of contempt is contained in W. G. Hale, *The Law of the Press*, pp. 256-270; see other references listed in Appendix III.

sentence herein should invite the senior Circuit Judge of the circuit to assign another judge to sit in the second hearing of the charge against the petitioner.<sup>7</sup>

Both judges and newspapers possess extraordinary power and both may use their power and privilege in a malicious way. But where individual judges or newspapers exceed their authority or privilege there is conflict and a lessening of the dignity of both the press and the courts. A committee of the American Bar Association, in a report submitted at the annual convention at Buffalo, New York, on August 31, 1927, laid down the following rules for newspaper men:

The newspaper reporter may, truthfully, fairly, accurately, objectively, write down and describe in words, for publication, every physical fact which he legitimately sees or hears in or about the proceedings.

Such a rule at the outset eliminates the play of imagination, exaggeration, effusion, distortion, deduction, conjecture, prediction, and all of the secondary mental processes often exercised upon the primary physical facts by ingenious reporters, which do havoc to litigants, courts, the processes of public justice, and inevitably tend to undermine public confidence in our judicial institutions through deliberate misrepresentation.

There is no more justification for having a trial reported by a layman reporter, or by dramatists, actors, preachers, scenario writers, and "sob-stuff artists" than there is for having a financial, economic or scientific analysis made by a reporter knowing nothing of finance, economics, or science.

Trials should be reported by persons educated and trained in the technic of the proceedings, as well as being gifted with a popular and truthful literary style.

Generally speaking, there is "no absolute right in the publishers of newspapers, for themselves, or for the information, amusement, or agitation of the public, to attend or report trials; and the privilege of attending and reporting usually accorded has no basis in the constitutional guarantees concerning the freedom of speech or of the press, with which it is often confused." The Constitution of the United States does not guarantee to newspapers the right to report trials. The state constitutions, however, specifically provide that criminal trials are

<sup>7</sup> Cooke v. U. S., 267 U. S. 517, 45 Sup. Ct. 390.

to be public. In private litigations the public may, generally, be excluded if the litigants desire it.

This is an unsatisfactory situation. In some instances it may operate as a protection to litigants, but in other instances it may operate against the public interest. It is desirable, for example, whenever sensational newspapers deliberately exploit sordid divorce cases; but in private litigation in which a public equity is at stake it is not desirable. In some large cities the responsibility of the local bar associations for the conduct and ethics of attorneys is extremely lax and the judiciary system, too, is a network of politics. Theoretically, the American lawyer is an "officer of the court," but actually he is not. In this era of urban civilization the so-called leaders of the bar are no longer at the bar; they are in offices in high buildings and often send second-rate assistants to the bar to plead private cases; they also permit unscrupulous attorneys to monopolize most of the criminal practice in which the "leaders of the bar" formerly engaged. Public rights, therefore, are not always protected by the profession upon which formerly the inarticulate citizenship depended. Were it not for the newspapers, the public in large cities would at times be at the mercy of unscrupulous lawyers, judges, private interests, and politicians. But the layman does not fully appreciate the newspaper in its character of a quasi-public institution, so the newspapers themselves must insist upon a moral right to attend and report all trials in which a public interest is at stake. Newspapers, indeed, do not possess a legal right to report private litigation, but they possess a moral right. It is because the newspaper, more than any other private business, and the newspaper man, more than any other professional man, is a champion of civic righteousness that the profession attracts a caliber of personnel whose sense of honor, honesty, and fair play is exceeded by no other profession.

**Other Forms of Crime.**—Crime does not alone consist in the commission of criminal acts; crime may result, for example, from negligence or recklessness as well as from specific intent. Moreover, it is also a crime to *attempt* to commit a felony or to *solicit* another to commit a crime.

It is also a crime for two or more persons to conspire to do

an unlawful act; or for two or more persons to conspire to do a lawful act which, when committed by their joint effort, becomes unlawful; or for two or more persons to conspire to use unlawful means to accomplish an innocent act. These acts are generally referred to as *conspiracy*.

Conspiracy is difficult to define but the following cases illustrate its nature:

1. Three men agreed among themselves to commit a burglary and, although they did not consummate the act, they were found guilty of conspiracy to commit a felony.

2. Three retail gasoline merchants agreed among themselves to estrange and alienate the customers of a competitor by threatening his customers and by defaming him in order to drive him out of business.

3. A group of men defrauded the United States government by conspiring with an official geological surveyor to permit them to examine his completed geological map before he submitted it to the proper government officials.

**Principal and Accessory.**—Those who participate in crimes are either principals or accessories. Principals are those who are present at the commission of the act, and accessories are those who are absent at the commission of the act, but who nevertheless contribute to the criminal act. Principals are of two degrees. A *first degree principal* is one who either performs the act or is responsible for it; for example, a physician who, with felonious intent, prescribes medicine and procures an innocent person to give it to the victim is the first degree principal in a crime just as much as is a burglar who shoots and kills a jeweler. A *second degree principal* is one who, though not performing the act, gives aid to the principal.

Sometimes statutes change the definition of first and second degree principals to fit certain novel circumstances. For example, in 1927, five persons—three women and two men—were convicted of manslaughter in connection with the killing of a motion picture actor in Hollywood, during a party in which liquor was served, although only one of the persons present fired the shot. Under the law pertaining to riots, whenever three or more persons unlawfully assemble together (possession of liquor is unlawful) all persons in the assembly are taken to share in the guilt if any one is killed.

Accessories are either accessories *before the fact* or *after the fact*. An accessory before the fact is one who advised or planned the criminal act, or otherwise abetted it prior to its commission without being present as a criminal. An accessory after the fact is one who, with knowledge of the crime, is not present as a principal but who afterward aids the principal to evade arrest or prosecution. For example, an actress was sentenced to prison in March, 1928, for from one to three years for concealing evidence in connection with the killing of her husband by her lover; she was charged in the indictment as being an accessory after the fact.

#### PRELIMINARY PROCEEDINGS

**Warrants.**—A defendant is brought to trial following his arrest by an officer of the law.<sup>8</sup> An officer may legally arrest a person when the crime is committed in his presence. But ordinarily the officer carries a writ which commands him to take the defendant and bring him before a judicial officer to answer to a complaint made by a private citizen. The writ is called a *warrant* and is issued by a magistrate after the complaining witness—either a private citizen or an officer—affirms on oath that he has “reasonable grounds” for believing that a crime has been committed by a certain person. When a person is served with a warrant by an authorized officer he has no legal alternative but to accompany the officer.<sup>9</sup>

A typical form of warrant, together with the affidavit of the complaining witness, follows:

STATE OF WISCONSIN }  
COUNTY OF DANE } ss

*In Superior Court*

Personally came John Roberts who, on oath, saith that to the best of his knowledge and belief, Edward Eddings did, on the ninth day of March, in the year 1928, in the City of Madison and county aforesaid, commit the offense of assault and battery upon the person

<sup>8</sup> Corporations accused of criminal practices are brought to trial by means of a *summons* because corporations cannot be arrested.

<sup>9</sup> The so-called John Doe warrant, that is, a warrant issued when the name of the person who committed a crime is unknown, is illegal. Any person arrested on such a warrant, if his name is not John Doe, cannot



of the said John Roberts by striking him violently with a stone, contrary to the statutes of Wisconsin as provided, and this deponent makes this affidavit that a warrant issue for his arrest:

Sworn to and subscribed before me,  
this ninth day of March, 1928.

WILLARD EVANS, *Superior Judge.*

JOHN ROBERTS

\* \* \*

STATE OF WISCONSIN }  
COUNTY OF DANE } ss

*In Superior Court*

To the Chief of Police, Lieutenants or Patrolmen in the City of Madison and to any Sheriff or his Deputy, Coroner, Constable or Marshal of said State—

Greeting:

John Roberts makes oath before me that on the ninth day of March, in the year 1928, in the City of Madison, and county aforesaid, Edward Eddings did commit the offense of assault and battery upon the person of the said John Roberts.

YOU ARE HEREBY COMMANDED, To arrest the body of said Edward Eddings and bring him before me, or some other judicial officer of this State, to be dealt with as the law directs.

You will also levy on a sufficiency of property of said defendant to pay the costs in the event of said conviction. **HEREIN FAIL. NOT.**

Witness the Honorable Willard Evans, Superior Judge.

Given under my hand and seal, this ninth day of March, 1928.

WILLARD EVANS, *Superior Judge.*

**Search Warrants.**—Because the United States Constitution guarantees a citizen security in his home, officers of the law have no right to enter and search his premises without a search warrant. A search warrant is obtained in the same manner as a warrant of arrest, that is, a magistrate issues it on the affidavit of a private citizen or a police official who affirms that he has "reason to believe" that the defendant's property contains evidence of crime, as for example, stolen property, intoxicating liquors, or drugs. A search warrant must be accurate in its location of the property and the description of the evidence. Hundreds of cases involving violation of the prohibition laws

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be held. The John Doe warrant, however, serves a useful purpose in bringing certain criminals into the jurisdiction of the court where, after their true names have been discovered, they can be rearrested on a valid warrant.

have been dismissed because the search warrants were defective; trial and appellate judges have differed in defining what constitutes an adequate basis for an affidavit to support the issuance of a search warrant, and some states are passing statutes to define the basis of a search warrant in liquor cases.

*Raids.*—In some instances officers may make arrests without warrants. It is not possible to differentiate cases within the brief scope of this section except for the statement that ordinarily when the offense is committed in the presence of the arresting officer the arrest is legal. Generally, however, the law protects a citizen against unlawful arrest and detention, and judges are quick to discharge prisoners who are illegally arrested.

In order to curb gambling, to enforce prohibition laws, and to harass professional criminals, the police frequently resort to raids. Raids, of course, are illegal and the arrested persons are immediately discharged when they are brought before examining magistrates, but the police find them effective, though illegal, devices for protecting society against professional criminals and demimondes.

*Habeas Corpus.*—The Bill of Rights of the United States Constitution asserts the right of the citizen to be secure in his person, his house, his papers, and his effects, and to trial by jury. Therefore, as soon as a citizen has been arrested he is entitled to be brought before the proper magistrate and confronted with the charge against him and to be allowed bail in a reasonable sum.<sup>10</sup> If an arrested person is held in prison for some time without being offered an opportunity to defend himself, his attorney may obtain a writ of habeas corpus<sup>11</sup> in order to force his custodians to release him or produce him in court. Application for a writ of habeas corpus is made to a Judge who permits the custodian of the prisoner to argue his reasons for holding the prisoner; this argument is called the *return*. To the return the prisoner's counsel makes an answer, and the Judge thereupon either issues the writ or denies the application. The writ of habeas corpus is seldom applied for because prisoners are ordinarily given a preliminary trial soon after they are arrested.

*Extradition.*—When a fugitive from justice is arrested in another state it is necessary for the Governor of the state in

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<sup>10</sup> Bail may be denied persons accused of grave capital offenses.

<sup>11</sup> "Produce the body."

which the crime is alleged to have been committed to request the extradition of the prisoner. The Governor of the state in which the fugitive was captured may either honor the request for extradition or deny it. The Governor, when in doubt as to whether the public interest would best be served by allowing the return of the prisoner, holds an extradition hearing. Witnesses are summoned and the Governor decides upon the basis of the evidence they produce.

**Preliminary Trial.**—Immediately after a person has been arrested he is produced in court. If the charge is a misdemeanor, he is tried summarily in an inferior court, such as a Police Court, a court of the Justice of the Peace, or a Traffic Court. If the charge is a felony, he is taken before a Justice of the Peace or a Police Court Judge and “booked.” The defendant may either waive a preliminary hearing and request to be released on bond pending the action of the grand jury, or he may request an examining trial; in the latter event, an early date—usually the following day—is set and the defendant is released on bond until the time of the examining trial. If arrested at night, a defendant is usually booked until the next morning except in cities which have *night courts*.

Most defendants accused of felonies waive a preliminary hearing and furnish bond or go to jail until the grand jury has indicted them and a regular trial may be had. If a defendant is sure that he can convince the examining magistrate that he should not be held to trial, he consents to an examining trial; but if he knows that the evidence against him constitutes probable cause of guilt, he usually waives the preliminary trial in order to prevent the prosecution from learning what his line of defense will be at the regular trial.

A preliminary, or examining, trial proceeds quite like an ordinary trial. Sometimes it is as long drawn out as an ordinary trial, but usually it is rather perfunctory. Witnesses are examined by counsel for both the state and the defendant and at the conclusion of the evidence the magistrate renders a decision. All examining trials are summary, that is, a Judge instead of a jury hears and decides upon the evidence. The decision of the magistrate, however, is not that the defendant is “guilty” or

"not guilty"; the decision is that the defendant is either not guilty or that probable cause was shown to justify holding the prisoner to the action of the grand jury. If the magistrate decides that the defendant ought to be held to await the action of the grand jury, he fixes the amount of the bail according to the nature of the offense. In states in which the grand jury has been abolished, an offender is held until he is brought to trial by the filing of the Prosecuting Attorney's information.<sup>12</sup>

Preliminary trials at which a great deal of interesting evidence is presented are so rare that newspaper reporters seldom have opportunity to report them. Because preliminary trials are not docketed, as are ordinary trials, reporters learn about the time for which the trials are set for hearing either from the committing magistrate or from the Prosecuting Attorney. Preliminary trials are usually held in the small court rooms of the committing magistrates.

Maynard Warder, arrested last Wednesday in connection with the fatal shooting of Amos R. B. Rogers, was held to await the action of the April grand jury at the conclusion today of a preliminary trial in superior court.

Judge Vivian Hayes ordered the Kane county politician released on \$20,000 bail, which was furnished by F. S. Murphy, Kane county sheriff, and S. E. Milton, cashier of the Columbian National Bank.

Warder took the witness stand and attempted to show that the homicide was justifiable. He asserted that he was attacked by Rogers while his back was turned. Henry Maxwell, a bellboy in the Ranier Hotel, where the shooting took place, and Moses Cohen, a traveling salesman, corroborated Warder's testimony.

Prosecuting Attorney David S. Davis, after introducing the testimony of Coroner T. Q. Lecompte and Russell Godley, an eye witness, pointed out to Judge Hayes that Warder was armed and that Rogers was unarmed.

Judge Hayes held there was probable cause for trying Warder for manslaughter and said it was a matter for the grand jury to act upon.

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<sup>12</sup> *Infra*, p. 67.

fessional bondsman is a person with a small amount of real property—perhaps a building lot—who conspires with an examining magistrate or bond recorder to furnish bond, for a high fee, for unfortunate defendants who are without friends, pledging the same property over and over again on different bonds and swearing in each instance that the property is unencumbered. In Chicago in 1920, 426 defendants defaulted on a million and a half dollars in worthless bail bond.

In reporting arrests and examining trials, reporters should usually tell whether the prisoner is released on bond, held without bond, or is unable to furnish sufficient bond. The failure of some defendants to furnish bond is an interesting fact as is, also, the amount of the bond. The reporter can learn the amount of the bond from the examining magistrate, the Court Clerk, or the *Bond Recorder*. The names of the bondsmen are also sometimes important facts.

*Peace bond* is required of a person who has threatened bodily harm to a complaining citizen, and the bond is forfeited to the state if he breaks the peace by attacking the complaining citizen or by injuring his property. Defendants in certain criminal cases are also required to execute bond to desist from certain practices, as for example, a proprietor of a brewery is placed under bond to guarantee he will not violate the prohibition law.

Bond is required to be posted by other persons than defendants in criminal cases. *Civil bond* is required of parties to a suit when appeal is taken to a higher court; likewise, in the course of certain equity suits one party is put under bond in order to protect the adverse party from anticipated damages.

All civil officials are required to furnish *official bond* during their terms of office; this bond is ordinarily furnished by surety companies for a fee and is legitimate except that frequently political bosses make appointments to office and require the appointees to obtain bond from surety companies with whom the bosses split the fee.

**Indictments.**—Although many criminal cases are initiated by a complaining witness, sometimes called the *private prosecutor* who "swears out a warrant" for the arrest of a person, no person can be tried except on charges embodied in an indictment, a presentment, or an information. A warrant is

merely for the purpose of bringing an offender into the jurisdiction of the court, but trial of the person cannot proceed without charges being made in some one of the three forms mentioned above. Indictments and presentments are presented to the court by a grand jury; informations are presented to the court by the *Prosecuting Attorney*, sometimes called the *District Attorney*, the *State's Attorney*, or the *Commonwealth's Attorney*.

At the end of each term of court the Jury Commission—usually composed of the Sheriff and two citizens appointed by the Judge—selects from the tax records a list of freeholders and householders of good reputation, writes the name of each on a slip of paper, and puts the slips into a hollow wheel or barrel. The wheel is revolved so as to mix the slips of paper, and a certain number of names are drawn out and listed for service on the grand jury for the next term of court. Ordinarily about twelve citizens compose the grand jury although in several western states the number varies from six to twenty-three. The duties of the grand jurors are to investigate crimes committed within the jurisdiction, to examine into the conduct of the government of the county, and to make inspections of the county eleemosynary and penal institutions.

Just before the opening of a term of court the Sheriff summons the citizens whose names were drawn from the wheel for service on the grand jury. Ordinarily newspapers do not publish the names until court is about to convene, otherwise an opportunity would be provided for influencing the prospective grand jurors before they were sworn. When court convenes the Judge calls to the attention of the grand jury, in an address called a *charge*, any rumored conditions in the county which the criminal law can remedy. The grand jurors take an oath and repair to the grand jury room where they sit in secret session for several days, hearing the sworn testimony of witnesses they have subpoenaed.

The grand jury's investigations are of two kinds. It considers, first, evidence in criminal cases involving persons already arrested and held in jail or under bond. It considers, secondly, criminal cases in which no arrests have been made, or conditions which ought to be remedied by the criminal laws; in the latter

instance the conditions are usually called to their attention by private citizens.

When the grand jury considers cases in which arrests have already been made the Prosecuting Attorney is present. He presents to the grand jury the evidence that is in his possession and requests that an indictment be voted in each case. The grand jury, unlike the magistrate at the preliminary trial, does not hear evidence in defense of the accusation. But if the evidence presented by the Prosecuting Attorney establishes a *prima facie* case,<sup>13</sup> an indictment is voted and the foreman of the grand jury indorses "true bill" on the form which the Prosecuting Attorney has prepared. If, on the other hand, the grand jury votes that the evidence presented by the Prosecuting Attorney is insufficient to establish a *prima facie* case, the foreman indorses on the form "ignoramus."<sup>14</sup>

When the grand jury considers cases upon its own initiative or upon the allegations of private citizens who appear before it, and it decides that a crime has been committed and that certain persons should stand trial it reports a bill of indictment called a *presentment*. Cases of this kind concern crimes of which the Prosecuting Attorney has not taken notice but which are of such public concern as to demand trial. Such cases usually concern election frauds, vice conditions, improper administration of county institutions, and alleged extravagance of public officials; grand juries, also, delve into certain minor alleged immoralities, such as the sale by news dealers of obscene magazines.

The form of an indictment follows:

STATE OF ARKANSAS	}	INDICTMENT
vs.		
JOHN DOE		

*Johnson Circuit Court*

The Grand Jury of Johnson County, in the name, and by the authority of the State of Arkansas, accuses John Doe of the crime of murder in the first degree, committed as follows:

<sup>13</sup> That is, a case in which the evidence is sufficient to convict if not rebutted

<sup>14</sup> "We ignore (it)."

A John Doe hearing on the mysterious letter received several days ago by Mrs. Frank C. Costigan was held before Justice W. O. Brown this afternoon. The hearing was being directed by District Attorney C. V. Owen and Detective Sergeant K. E. Thompson.

Several persons were called to testify at the secret hearing through which authorities hope they will gather a clue as to the identity of the person who wrote a letter to Mrs. Costigan demanding that she place \$1,000 on the steps of Grace Episcopal Church. The money was not posted.

### EXERCISES

1. A prohibition officer in a boat, while chasing a fleeing rum runner, runs into the boat of a private citizen and kills him. He continues the chase without coming to the aid of the stricken man even though he perceives him struggling in the water. What charge would probably be brought against the prohibition officer?
2. In which category of crimes would the following statutory crimes be placed: stuffing ballot boxes, extorting money, illegally possessing whiskey, disturbing the peace?
3. Debate the question, "Newspapers have a moral right to report all trials."
4. Debate the question, "Trial for constructive contempt of court ought to be by jury."
5. If you were a newspaper editor, how would you proceed to reform the evil bail-bond practices in your city?
6. Debate the question, "Grand juries serve no useful purpose, and all defendants should be brought to trial by process of the information."
7. Under what circumstances may the publication of the secret proceedings of grand juries be justified?
8. The grand jury has finished its work and is ready to report. The Judge interrupts an important trial to permit the grand jury to make its report and adjourn. The foreman of the grand jury hands a sheaf of indictments to the Judge and retires. The Judge thereupon orders the trial to be resumed. A newspaper reporter who is covering the trial has reason to believe that an important indictment is among those returned by the grand jury. He is eager to obtain the information and telephone his city editor. How does he obtain the information?



## CHAPTER IV

### CRIMINAL TRIALS

As indictments are returned or as informations are filed they are listed by the Clerk of the court on the trial docket. The Clerk, by conferring with attorneys and by using his own judgment, estimates that a particular trial will require a certain number of days or a certain part of a day. He usually docket a trial that is estimated to last only a short time on the same day set for a long trial so that, in the event of a continuance of one of them, the attorneys and witnesses in the other trial will be ready. Before the beginning of a term of court or, in some instances, a few days before the date set for a particular trial the Clerk issues subpoenas to compel the attendance of witnesses. The subpoenas are served by the Sheriff, and witnesses must obey them or take the risk of being held in contempt of court. The state compels the attendance of witnesses subpoenaed by the defendant as well as of witnesses subpoenaed by the prosecution. On the day set for a trial the defendant is formally arraigned in court. The trial may be the first on the docket for that day or it may begin at the conclusion of another trial.

It is not necessary for newspaper reporters to listen to the evidence in all criminal cases. In many cases the only matter of interest is the result of the trial. After a jury has announced a verdict and the Judge has pronounced a judgment the Clerk enters the judgment in his records. A typical entry is as follows: "No. 347, State *v.* Jones, Guilty, Three Years. Jury No. 1, as follows: (here follow the names of the jurors)." The entry, instead of "Guilty, Three Years," may read, "Not Guilty," "Dismissed Without Prejudice," or "Continued." By referring to the Clerk's records two or three times a day, the reporter can learn the disposition of the minor criminal cases. He ought, of course, to be familiar with the nature of all of the cases so

that he can relate the character of the crime charged and, perhaps, some of the details of the case. Most criminal cases worth reporting have a history that is familiar to the reporter from the time of the arrest to the time of the trial.

**The Setting.**—In many trials it is important for the newspaper reporter to describe the setting. Courts of justice ought not to be treated as mere stages set for the amusement of the spectators and described for the amusement of newspaper readers, but no harm is done in providing the reader with a picture of the trial scene; the principal harm arises out of the sensational reporting of unsavory cases, not from reporting interesting cases in an interesting manner. Many important and interesting trials are held in unfamiliar and picturesque places, as for example, the so-called evolution trial at Dayton, Tennessee; and often the juries and the judges have quaint and rugged personalities. More often, however, the peculiar setting that a trial possesses is given to it by the character of the principals. The following description of the setting of a trial serves to give the reader a background for understanding the trial and provides the reader with a conception of the forces engaged and the stakes at issue:

Smiling as ever, sharp blue eyes twinkling behind his gold spectacles, Mr. Van Dusen entered the court room to face the charges with every mark of serene confidence. His wife, his son, his son's wife, the battery of expensive counsel, followed in his wake.

Mr. Rood, the co-defendant, stooped, thin, gaunt and gray, chewing an unlighted cigar, came almost shuffling in, his legal battery around him. They nearly filled the well before the bench.

A score of newspaper men formed the next phalanx. Three inadequate rows took care of the few spectators who could get in, including some witnesses, among whom were Henry Louis Dill, the Philadelphia publisher, and United States Senator Wilson, whose investigations had helped to indict the defendants.

After eighteen months of sparring in grand jury rooms and judges' chambers, the trial to determine whether a cabinet officer had accepted a bribe was about to begin.

The reporter, however, has no right to provide his readers with a false setting for a trial. The following lead in the opening story of the trial of a prohibition agent charged with murder is a deliberate attempt to provide a false setting, and is aimed to prejudice the reader against the defendant at the very beginning of the trial.

Old Charles Gundlach's blood stiffened garments played Banquo's ghost in the federal court today when the state of Maryland came to grips with the federal government, on its methods of enforcing the Volstead Act in the ancient commonwealth that was founded by Lord Baltimore as a refuge for the oppressed.

**Special Pleas and Motions.**—When the time comes for the trial, the Judge asks the Clerk to read the docket and the Clerk calls out the title of the case, as "State against Smith." Whereupon the defendant and his attorneys seat themselves at one of the counsel tables inside the railing, usually opposite the counsel table of the prosecution. Formerly the indictment was read to the defendant and he was required to enter a plea, but according to the current practice, the defendant is given a copy of the indictment prior to the trial. When the Judge asks the counsel for the defendant whether he is ready for trial, the attorney ordinarily arises and enters a plea of "not guilty." Sometimes, however, he enters a special plea or moves the court to rule on a particular request. The defendant's attorney may make one or more of ten different pleas or motions. He may move to quash the indictment; make a plea in abatement; demur to the indictment; move for a bill of particulars; plead former jeopardy; make a plea to the jurisdiction; move a continuance; plead guilty; plead *nolo contendere*; plead not guilty.

When the defendant moves to *quash the indictment* he attacks the substance or form of the indictment. He may, for example, allege that the indictment was not endorsed "true bill," or that it was returned by a hand-picked grand jury. When an indictment is quashed, the state is legally entitled to another indictment with the defects remedied.

A *plea in abatement* does not attack the substance of an indict-

ment or information but some alleged illegal process concerning it. The plea may, for example, be based upon an allegation that the defendant was indicted by the wrong name, that the Judge was unfair in charging the grand jury in regard to conditions with which the indictment was concerned, or that unauthorized persons were present in the grand jury room.

A *demurrer* to an indictment challenges the indictment on the ground that the offense charged does not legally constitute a crime. For example, it was argued in the well-known Elk Hills naval oil reserve case that because the defendant, Albert B. Fall, former Secretary of the Interior, was not legally authorized to execute the oil leases to E. L. Doheny no crime had been committed; that is to say, since it was not legally possible for a Secretary of the Interior to lease oil lands reserved by the government it was not possible to bribe him to lease them to Doheny, the co-defendant. This demurrer was overruled by the trial Judge.

Sometimes a defendant demurs to an indictment on the ground that the alleged crime was committed so long ago that prosecution is barred by the *statute of limitations*. The time limit provided by statute differs in the various states for various crimes and various kinds of defendants. For example, an official cannot be prosecuted for bribery or malfeasance of office four or five years after the offense has been committed, but private citizens may be prosecuted for various crimes after a much longer period. There is no statutory limitation on prosecution of a charge of murder, however.

A defendant sometimes does not wish to avoid trial by challenging an indictment, but nevertheless wishes to have the indictment made more definite. In that case he moves for a *bill of particulars*. If the defendant, for example, is accused of uttering a worthless check to another and he has at various times uttered other checks to the complaining witness, he may ask that the prosecution designate the specific check that is alleged to be worthless.

The *plea of former jeopardy*, permitted because of the constitutional provision that no person shall be twice put in jeopardy for the same offense, is an unusual plea. Seldom is

an attempt made to try a person again for the same offense unless it is as the result of a mistrial.

The *plea to the jurisdiction* is ordinarily a petition for a "change of venue," that is, a request that the case be tried in another jurisdiction because of widespread prejudice against the defendant or widespread knowledge by citizens of the details of the case. Ordinarily these petitions are presented several days before the trial and not as a trial is about to begin. Petitions for changes of venue appear to be increasing because of the increased circulation of newspapers and the current newspaper practice of telling the details of crimes before the cases come to trial. A second species of plea to the jurisdiction is the request that the case be tried by a jury brought from a distant jurisdiction rather than that the records in the case be transferred to another court, as would be the case if a change of venue were granted. Sometimes, too, a plea to the jurisdiction is entered which alleges that the Judge is prejudiced and requests him to recuse himself and appoint a substitute.

A frequent motion made as a trial is about to begin is the motion for a *continuance*, which results from the unavailability of certain important witnesses for one side or the other. Frequently an important witness for one side becomes suddenly ill and a motion for continuance is made necessary, but sometimes the motion for continuance is a mere dilatory tactic of the defense meant to delay the trial in the expectation that important prosecution witnesses can be induced to leave the state. Judges deserve a portion of the criticism they are receiving for permitting these dilatory tactics.

Sometimes, however, it is an important state witness who fails to appear and the Prosecuting Attorney requests a continuance. In some instances it is even necessary for the Prosecuting Attorney to request leave to *nol pros* a case. *Nol pros*, or *nolle prosequi*, means "do not wish to prosecute." So long as *nol pros* is allowed to be written on an indictment prior to a trial—that is, before a juror has been sworn—the Prosecuting Attorney can bide his time and take out a second indictment after the witness is available. If, however, he *nol prosses* a case after the trial has begun, the defendant cannot be tried on a

second indictment because he would thereby be twice placed in jeopardy for the same offense.

If a defendant pleads guilty, the trial ordinarily proceeds no further, for the plea is usually entered by the defendant in the hope of obtaining leniency from the Judge. In the notorious Loeb-Leopold case the defendants entered a plea of guilty and then introduced evidence in mitigation of the offense in the hope of obtaining more leniency from a Judge by pleading guilty than from a jury by pleading not guilty. The Judge in the case sentenced the prisoners to life imprisonment whereas a jury might have returned a death verdict.

If the defendant pleads *nolo contendere*—an unusual plea—the effect is the same as pleading guilty in the particular offense charged but with the reservation that the admission does not prejudice the defendant elsewhere. *Nolo contendere* means "I will not contest it." Such a plea was entered by seventy-five members of a trade association charged with violation of the antitrust laws after sixty-nine other members of the trade association had been fined \$450,000 for the same offense. The seventy-five members, although refusing to admit their guilt, thought it better to plead *nolo contendere* and consent to pay small fines rather than stand the expense of a long trial. It was a mere matter of dollars and cents to the defendants and an escape from the contumely of finding of guilty.

When the defendant pleads not guilty the issue is joined, and the trial proceeds. It is then the task of the prosecution to prove that the defendant is guilty. Even though the defendant expects to admit the evidence of the prosecution that he committed a certain offense, he may, under the plea of not guilty, try to prove self-defense or insanity. In some states, however, the statutes now provide that a plea of insanity shall be a special plea, such as "not guilty because of insanity." Under this rule, if a defendant is found to be sane, he must then stand trial and is not permitted to plead insanity as a defense.

In cases in which two or more defendants are named in the same indictment one or more of them may move for a severance that is, request a separate trial.

To all the motions and pleas which the attorneys make and which the Judge overrules they may note "exceptions" in the record, anticipating making use of them as grounds for a new trial or for an appeal. Sometimes a great deal of time is consumed by attorneys in arguing pleas and motions before the trial gets under way. Although the argument chiefly concerns points of law and the attorneys read long excerpts from judicial decisions, the character of their argument is oftentimes significant if not interesting. Frequently, too, there is popular interest in a legal point and sometimes a point of law is one of the most important phases of a criminal case. For example, an unimportant case involving violation of the Eighteenth Amendment attracted wide attention shortly after the prohibition laws went into effect because attorneys for the defendant, in moving to quash the indictment, tried to prove that the Judge of the court appointed jury commissioners who, at the Judge's behest, agreed to select as grand jurors only men who were prohibitionists.

**The Stages of a Trial.**—Attorneys do not always make the special pleas and motions described in the foregoing paragraphs. Usually the selection of jurors proceeds immediately after the trial is called. The order in which a criminal trial proceeds is, in most jurisdictions, as follows: (1) selection and swearing of jurors; (2) opening statement of the prosecution; (3) direct and cross-examination of the state's witnesses; (4) opening statement of the defense; (5) direct and cross-examination of the defense witnesses; (6) rebuttal testimony of the state; (7) arguments to the jury, or the summing up; (8) the Judge's instructions to the jury; (9) deliberation and verdict of the jury; (10) sentence by the Judge. Various motions can be made by the attorneys at different times during the course of a trial and some of them, if sustained by the Judge, have the effect of concluding the trial at the stage reached when the motion was made.

**Selection of Jurors.**—Jurors who are to serve at trials during a term of court are chosen at the same time and in the same manner as grand jurors.<sup>1</sup> Usually a panel of about fifty freholders and householders is chosen and, during a term of

<sup>1</sup> *Supra*, p. 63.

court, is divided into two or more different petit juries. The petit, or trial juries, are known as Jury No. 1, Jury No. 2, etc., and one jury is engaged in hearing evidence in a trial while another is deliberating on the evidence presented in a previous trial. Of the whole group summoned, some will be excused by the Judge on account of illness and for other reasons. For important criminal cases in which attorneys exercise great care in selecting jurors a special body upwards of two hundred *veniremen* is summoned to qualify for jury service in the particular trial.<sup>2</sup>

When the court is ready for the selection of jurors to proceed a Bailiff or Clerk calls the name of the first venireman on the list, and the venireman takes a seat in the jury box. Attorneys for both sides question him as to his qualifications and his opinions in regard to the particular case. Usually the attorneys inquire perfunctorily whether the venireman is related to the defendant, whether he already has a fixed opinion as to the defendant's guilt, whether he believes in capital punishment, and such other questions as pertain to the issue of the trial. If both sides are satisfied with the answers, the venireman is temporarily accepted, but if his answers are unsatisfactory to either side he may be excused. This is called *challenge for cause*.

Attorneys continue to question other veniremen until finally twelve have been allowed to retain their seats in the jury box.<sup>3</sup> But not always are the twelve finally accepted. Each side is entitled, in addition to the challenge for cause, to a certain number of *peremptory challenges*; that is, they are allowed to excuse a certain number of veniremen without assigning a reason. Statutes usually provide that each side may use five peremptory challenges, and in some states the defense is entitled

<sup>2</sup> Only the men actually chosen and sworn to hear evidence in a trial are called *jurors*. The prospective jurors, that is, the body of men summoned for jury service regardless of whether they are finally excused or impanelled, are veniremen. Veniremen are frequently referred to as talesmen, but strictly a talesman is a person summoned for jury service from among the bystanders in the court room or from the immediate environs of the court house.

<sup>3</sup> In some jurisdictions a thirteenth juror is chosen to serve as alternate in the event that one of the regular jurors becomes ill or otherwise unavailable during the trial.



to use twice as many peremptory challenges as the prosecution. In some instances, the parties in a trial have exercised the right of *challenge to array*; that is, they challenge the whole list of veniremen on the suspicion or knowledge that they were hand picked by the officers who summoned them.

The privilege of examining jurors is being abused to such an extent that jurists have recommended certain reforms. The examination of jurors in some trials extends over several days with great loss of time to veniremen, court officials, and the parties who have business in the court. A report of the Illinois Association for Criminal Justice pointed out that in the case of *The People v. Harry J. (Lefty) Lewis*, a total of 1,350 veniremen were summoned. Of that number 128 were returned "not found," 192 were served with a summons but did not respond, four were reported dead, 236 excused, forty were out of town, and five were ill, a total of 655 prospective jurors who did not appear in the box for questioning. The number that appeared was 695, of whom 646 passed through the jury box before the necessary twelve were selected. Out of the 646 who were questioned, 163 were excused because they claimed they had conscientious scruples against the death penalty; 386 were excused when they said they had fixed opinions; sixty-five were excused by agreement of counsel; and thirty-two were peremptorily challenged, sixteen by the state and sixteen by the defense. "The defendant was acquitted in the face of the testimony of eight eye witnesses that the defendant shot the deceased in the back while the deceased was running away. The view that the verdict would have been different if the jury had consisted of twelve representative citizens is generally accepted."<sup>4</sup>

The British practice is for the Judge alone to conduct the preliminary examination of jurors, and for an attorney to challenge a juror's bias only when he has evidence at hand to support his challenge. Some United States district judges, following a recommendation of the conference of the federal circuit judges, now interrogate the challenged jurors.

In some trials it is important that the selection of the jury be fully reported. In important trials the reporter ought to tell the names, occupation, and sex of the jurors finally accepted. *Quite often the questions asked the veniremen are worth reporting*, as is also the character of witnesses that one side or the other objects to during the examination of veniremen. "Are you a Jew?" "Have you ever belonged to the Ku Klux Klan?"

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<sup>4</sup> Chicago Tribune, May 27, 1928.

"Do you read the *Nation* or the *New Republic*?" are types of questions which forecast the line of proof and defense in a criminal trial.

Judge Carter did most of the preliminary questioning of veniremen, then turned them over to District Attorney Herbert Martin, and later to the defense.

Martin contented himself mainly with ascertaining that the tentative jurors had no feeling against capital punishment for the crimes set forth in the indictment under which Davis is on trial, but Ellery Edwards, chief counsel for Davis, was not so brief.

He first insisted that each juror tell whether he had any fixed idea that the legal defense of insanity is "used as a sham or subterfuge." He insisted on negatives to the question: "Would you vote a hanging penalty regardless of whether the defendant seems to you to be sane or insane?" and also to the question, "Do you think that insanity is a valid defense for a criminal act?"

The defense, the district attorney, and the court raised voices several times over the reiterated questions. Judge Carter asked Edwards for precedents in other cases, and getting none, informed the defense attorney that "reasonable doubt in a circumstance like this is not the law of California."

The answers of the prospective jurors were varied, most of them returning no direct answer, but saying they would be able to submerge previously formed opinions and rely on evidence and the judge's instructions.

Eventually Judge Carter tried to inject speed by suggesting that, inasmuch as Edwards' questions were of such a nature that they could be asked of all the jurors, the defense should examine the remaining taleymen in a group. Only such questions as pertained to each individual juror personally were permitted to be asked one at a time. The defense attorney objected, but was overruled.

Edwards asked Mrs. Esther Warren, 201 Eastern Parkway a widow whether she would be fearful of public opinion in returning a verdict if she concluded that Davis was insane. She said that she would be "freetest in my conviction."

to separate waiting rooms to await a call to come to the witness stand.

After the Prosecuting Attorney has finished his opening statement he calls the first state's witness to the stand to undergo *direct examination*, or *examination in chief*. After the witness has answered all the questions put by the Prosecuting Attorney the defense counsel, if he chooses, *cross-examines* the witness, after which the state is entitled to conduct a *redirect examination*. The state's witnesses follow each other on the stand until the state has finally concluded its evidence.

The first witnesses called by the state are expected to establish what is known as the *corpus delicti*, that is, the "body of the crime." Before a person can be convicted on a charge of homicide it must be proved that some person was killed, or before a person can be convicted on a charge of arson it must be proved that a house was burned. Prior to the development of this rule of legal evidence which requires the state to prove the *corpus delicti* in order to obtain a conviction, numerous persons were executed for murder, and afterwards the supposed victim of the murder appeared in the flesh. Under the present rules of evidence a person cannot be convicted of murder even upon his own confession unless the *corpus delicti* has been established. Ordinarily in criminal cases, the state is required to prove the *corpus delicti* at the beginning of its direct examination; however, in 1925, the Prosecuting Attorney in Cook County, Illinois, attempted to convict a man on a charge of killing his ward by feeding him typhoid fever germs and, because the evidence was entirely circumstantial, presented the circumstantial evidence before attempting to prove that the defendant's ward actually died from being fed typhoid fever germs.

The witnesses who testify to the *corpus delicti* in a homicide case are usually the Coroner's Physician or an attending physician. These witnesses are usually followed by policemen, eyewitnesses, corroborating witnesses, witnesses who testify as to probable motive, character witnesses, and—sometimes—expert witnesses.

From the beginning to the end of the testimony the Prosecuting Attorney tries to construct a fabric of proof of the de-

fendant's guilt. It is the task of the reporter to select from all this mass of testimony the salient points and to emphasize the testimony that is important in order that the reader may have a clear understanding of the testimony. The reporter's task is quite like that of the narrative writer, but in many respects, is more difficult. For, although the reporter must construct an interesting story, he cannot, like the narrative writer, put untrue words into the mouths of the witnesses or select portions of the testimony which distort the character of the witnesses or select portions of the testimony which distort the character of the principals or the truth of the situation they are describing.

There are two rules of evidence which the newspaper reporter ought to know in connection with the procedure of direct examination. In the first place, a defendant's wife or husband is not permitted to testify for or against the defendant in a criminal case, except in a case in which one or the other is complaining of personal violence inflicted upon one of them by the other. In the second place, a defendant cannot be compelled to testify against himself or be compelled to produce documents or other evidence to be used against him in open court. Nor can the Prosecuting Attorney call the attention of the jury to the fact that the defendant refused to testify in his own behalf. It has been suggested that this rule, which grew out of the common law rule that forbade a defendant to testify in his own behalf, be abolished.

**The Nature of Evidence.**—The testimony of witnesses does not usually flow along in a clear stream of narrative; it is frequently interrupted by arguments between the opposing attorneys concerning the nature of the evidence that is being introduced. From time to time one attorney will prevent a witness from answering a question by a sharp "I object." The Judge either sustains or overrules the objections and ordinarily the questioning is resumed, but sometimes the examining attorney rises and presents an argument to the court to support his right to ask a question or to introduce certain evidence. Usually the Judge excuses the jury, pending a settlement of the argument, because many things which are said in the course of the argument ought not to be heard by the jury.

The disputes regarding evidence usually have to do with the relevance or competence of testimony. *Irrelevant* evidence is

that which does not relate to the issue. Testimony which does not throw any light upon the question at issue and which either consumes unnecessarily the time of the court or prejudices one of the principals ought not to be introduced. *Incompetent* evidence is that which is introduced without regard to the prescribed method; it refers to the form rather than the subject matter of evidence. For example, hearsay evidence, certain kinds of confessions, and the testimony of a layman who offers his opinion as an expert psychiatrist are regarded as incompetent.

Moreover, questions asked a witness on direct examination cannot be "leading" except when asked in a preliminary manner at the beginning of a witness's testimony; leading questions can be asked, however, on cross-examination. A leading question is one which is so framed that it elicits the desired answer. The following series of questions is leading:

"Did you see Mrs. Smith in the Hotel Belmont in July, 1926?"

"Yes."

"Did she show you any sleeping powders?"

The same questions when put in a different manner and answered are admissible:

"Did you see Mrs. Smith in the Hotel Belmont in July, 1926?"

"Yes."

"Do you recall the conversation?"

"Yes, she had brought over two bottles of gin and two vials of sleeping powders. I drank some of the gin. She asked me to try out the sleeping powders to see what effect they would have. I drank some more of the gin and took one dose of the sleeping powders."

In some trials, a great deal of time is consumed in the arguments of attorneys as to whether certain evidence that an attorney is about to introduce is admissible, and the Judge frequently cannot decide until after he has heard the evidence. He, therefore, excuses the jury, and hears the evidence, but does not permit it to go into the record unless he rules at the conclusion of the testimony that it is admissible. Some reformers have suggested that newspapers ought not to report any evidence

except that which is finally admitted to the record, but there seems to be little justification for such a rule.

**Cross-Examination.**—A witness for one side cannot be asked questions on cross-examination concerning which he has not testified on direct examination, except questions to test his veracity or accuracy, or questions otherwise designed to discredit his testimony. Theoretically, a witness for the state is the state's witness, and if the defense wishes to bring out additional evidence favorable to its side, it must afterward call the witness as a defense witness and permit the state to cross-examine him. If one side wishes to introduce the testimony of a witness with an ill reputation it petitions the court to call the witness as the court's witness so he may be questioned without the attorney's side having to vouch for him and thus discrediting its case with the jury.

Cross-examination is sometimes more difficult to follow than direct examination and the reporter must use his analytical faculties in order to perceive the significance of certain portions of testimony. Sometimes a witness for one side tells a quite credible story which is almost entirely discredited on cross-examination by a short series of questions concerning the witness's motives in testifying. The following excerpt from a news story indicates the nature of cross-examination; a portion of the direct examination is given first:

In sharp contrast with the naturalness of Mrs. Henry's testimony was the story told by B. B. Turner, a young man who seemed to remember details in an unusual way. He testified that he heard the shooting, ran upstairs, and met the Rev. Mr. Woods (the defendant) coming out of his study. He heard Woods say boldly: "I have killed me a man."

Turner then told of others who were present, apparently laying the foundation for their presence in a way that led the defense to charge that it was all untrue and a part of the alleged conspiracy which Woods declares is trying to convict him.

Turner testified that he was working for the Wilson Radio Company, which has an office on the church property just under the pastor's office. He heard shots, three in rapid succession, and one or two

more, and in two or three minutes he ran up the stairs to look.

As Turner got to the head of the stairway, he said, Mr. Woods walked out of his office and exclaimed: "I have killed me a man."

Turner looked at the body and went away. While there, he said, he noticed a colored janitor in the hall and another man of dark complexion wearing a light gray suit and gray soft hat with some books under his arm. He did not know the man, but said he could identify him and the Negro if he saw them again.

Attorney Tracey Underwood, red-haired, pugnacious defense attorney, took this witness in hand and cross-examined him for an hour in the details of his powers of observation, partly as to why he took such notice of the stranger with the books and the gray suit. The witness was confused and angry at times, but insisted that he had seen all this and that Woods had said: "I have killed me a man."

"Don't you know that you never were up there until it was all over and you did not see Woods at all?" he was asked.

"I did," he replied, heatedly.

He denied he had any grudge against the Rev. Mr. Woods, who, he said, conducted the services at his wife's funeral. He denied he had told fellow employes that his testimony would "fix" Woods and that the minister ought to go to the electric chair.<sup>6</sup>

**Reporting the Evidence.**—Because some criminal trials contain the elements of drama they are among the best news stories, and there is, consequently, a present danger that the homicide and divorce courts will be too frequently used as side shows to entertain a section of the public which craves morbid sensations.<sup>7</sup> Sharing the blame for the evils inherent in this current practice of "super-reporting" certain murder and divorce trials are the sensational newspapers, the courts, public officials, and the

<sup>6</sup> An excellent example, though an imaginary one, of how an attorney may abuse the privilege of cross-examination is contained in Theodore Dreiser, *An American Tragedy*, Vol. II, Chap. xxxv.

<sup>7</sup> For a description of how newspapers and courts combine their efforts to sensationalize trials, see C. Merz, *The Great American Bandwagon*, Chap. VI; also in *Harpers Magazine*, August, 1927. See also, the report of the sub-commission of the New York State Crime Commission in *The American Bar Association Journal*, Vol. XIII, No. 7, pp. 390-397, July, 1927.

public and its new attitude as regards morals. The remedy for the situation cannot be stated in a simple formula. How to report each future case will, for the time being, have to be decided by each newspaper at the moment; a remedial formula cannot be adduced until public and professional opinion have crystallized in future judicial decisions, statutes, and legal and journalistic codes of ethics, and there has arrived a new adjustment between the economic principles of newspaper publishing and the levels of public taste. Suffice it to say that in the interests of society the current methods employed by some newspapers are to be condemned, and the solution will probably come as a result of publishers refusing to give the public what it undoubtedly desires.

We are concerned here with only the dramatic and literary elements that pertain to the reporting of criminal trials. The plight of the person accused of a crime or the plight of his victim is frequently as interesting to a reader as is the well-conceived plot of the imaginative writer. The narrative writers borrow many of their plots from real life and only enhance them by the invention of new characters and situations. The principals and witnesses in criminal trials are frequently like those that one encounters in fiction and drama. The conflict theme and the devices of suspense and climax are also elements in criminal trials, though seldom as apparent as in fiction, in which the writer's imagination has free rein.

These facts the reporter should keep in mind when he is reporting a criminal trial, both for the purpose of making the report interesting and for the purpose of guarding against inaccuracy and partiality. To make his story interesting the reporter should be painstakingly careful in the selection and arrangement of his material and in the emphasis and description that he employs.

*The Principals.*—Each principal and witness, to the spectator in the court room and the newspaper reader, is a *dramatis persona*. Some of them even resemble heroes and villains, but to portray them deliberately as heroes or villains is to sin against truth and to violate the ethical standards of conduct. If by self-revelation a defendant, witness, or attorney makes himself a



hero or villain, the reporter, of course, should be grateful for this opportunity to make his story interesting; but the reporter ought never to treat the characters as anything but what they reveal themselves or each other to be.\* Yet the reporter should understand that to his reader every principal in a trial is, after all, a character. For that reason he ought to describe the principals—describe their persons and manners, if necessary.

The following description by Orville Dwyer, in the *Chicago Tribune*, of a defendant in a murder trial provides a true picture of a notorious gangster and is the keynote of the day's report of the trial:

Charlie Birger, roaring around southern Illinois in an eight cylinder car, conveyed by gangsters armed with machine guns, shotguns, rifles, and pistols, and boasting that the law wasn't big enough for him.

That was the picture of the former gang chieftain left tonight with the jury in circuit court, where he is on trial with Art Newman and Ray Hyland for the killing of Mayor Joe Adams of West City on Dec. 12.

Fourteen witnesses took the stand today. Waddell True, 27, who ran a little barbecue stand half a mile from the house of Joe Adams in West City and who sold home brew there, was the witness who gave the jury the best visualization of Birger as he was at the apex of his power last fall.

The following description of the chief defense witness in a homicide trial is not a bit less than adequate. This witness' testimony consumed nearly an entire day, and it was not only

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\* The adoption of this principle has been suggested by some reformers of the administration of justice as a means of combatting criminals. "If the press would paint the criminal in his true colors, it would do more for the suppression of crime than all the court reforms ever attempted," Judge Archie Dabney, of Charlottesville, Virginia, told the 1927 Conference on Press Relations at the Institute of Public Affairs at the University of Virginia.

"Let the court reporter," he said, "show the criminal as he is, not as a hero or martyr, but a degenerate, a diseased creature, if not abnormal at least subnormal, and a weakling without manly vigor to resist temptation to do wrong. The reporter should appeal to the sporting instinct of the public by showing that the criminal is one who has taken unfair advantage of his victim."

necessary that the narrator of the story be identified for the reader but that the reader be provided with a picture of him sitting on the stand telling his interesting story.

Henry Butts, a bald-headed, middle-aged banker and Sunday School superintendent in the Calvary Baptist Church, came to the defense of Arthur Hamlin today and related in public for the first time his version of the shooting of Miles Robinson, prohibition agent, in Hamlin's Plantation café on Aug. 26, last. Butts is the only person who knows all that preceded the Robinson killing because he sat in Hamlin's office when Robinson came in and was there when the shooting took place.

Butts was a former gambler and had known Hamlin in the Nevada gold fields. Both had come to Oklahoma though to pursue variedly different occupations. The banker said he often met Hamlin at his own or at Hamlin's office and that he had business and social relations with his friend of the gold field days despite Hamlin's continued derelictions.

"Art Hamlin was at heart as good a man as I am or probably as good as you men," he told the jury. "But Art loved his environment and could never escape from it."

As Butts related his story of Hamlin's past his own personality seemed to change a little. He did not seem quite the cautious bald-headed banker and Sunday School superintendent that he appeared to be when he first took the stand. One imagined glimpses of him twenty years ago with his trousers stuffed into his boots, a sombrero on his head, and a six-shooter dangling from his hips, standing at the bar in Art Hamlin's Nugget café in a Nevada mining town.

Frequently it is necessary to describe the manner or attitude of the witness or principal. The reporter, however, should guard against exaggeration or the use of adjectives which present an untrue picture, for to the newspaper reader as well as to the jury the manner of a witness is as much a part of his testimony as his words. The following true and objective description of a witness under cross-examination gives an excellent picture of the nervous tension under which the witness

labored; it was afterwards ascertained that his testimony was so evasive as to constitute perjury.

By this time, Mr. Bennet was dabbing at his lips with a handkerchief which soon became noticeably spotted with blood, and as the prosecutor hammered away with questions, Bennet became more and more agitated and his answers more hesitant.

Another example of a witness' attitude that was true and was objectively reported follows:

During the afternoon the witness' manner was gentle and her voice subdued until the harassing explanations demanded by the state's attorney concerning the notes. She grew brusque. She snapped out her monosyllabic replies. Her voice rose, she stiffened in her chair, as she flung her answers at the lawyer.

The description of a witness' attitude, however, can be reported in such an exaggerated manner that it presents a false picture of the witness and evokes prejudice in the reader. The following description is an example, the italics indicating prejudicial comment:

*As if carved on marble, the plain straightforward story of W— S— remains unsullied today.*

The man described as possessing only a childish mentality stepped down from the witness stand jauntily and *with the air of a victor*. He strode to a seat next to that occupied by Mrs. H—, and whispered:

"Was I all right?"

Mrs. H—'s answer was not audible. Anyway, it held no interest for the big crowd of spectators, *who already had made up their minds as to W—'s ability as a witness*.

It was a self-assured, pleasant man who mounted the stand as today's session opened. His *triumph* of yesterday afternoon, when he successfully withstood the onslaughts of Special Prosecutor A— S—, seemed to provide him with unusual acumen. His answers were strictly relevant and given without the least show of hesitancy.

The situations described by witnesses in some trials ought not to be reported at all. Although it is necessary in the settlement of divorce cases and in the determination of guilt in criminal cases for the whole truth to be told in the court room, the reporter is not obliged to convey this information in its entirety to his readers when the situations described are offensive to morals, or are shocking, repulsive, or otherwise offensive. The reporter can usually picture offensive scenes in a manner which provides the reader with a judgment as to the characters in the scene but which does not offend the reader. The following description of a murder scene reenacted in a court room illustrates how a reporter made effective use of details in describing the scene, but also chose offensive words and labels and incorporated certain offensive details:

Ruth Snyder's "slave man" stuck to his story today. He was led in and out of the Snyder chamber of horrors by two lawyers, but always Judd Gray had the blonde woman with him.

There is no longer any trace of mystery in the murder of Albert Snyder. The little corset salesman, nervous at times but never reluctant, has cleared it all up.

"Why did you hit Albert Snyder on the head with this sash weight?" shouted Dana Wallace, counsel for Mrs. Snyder.

"I had no reason to do it at all," Judd replied quietly.

Then Wallace handed him the murder instrument. Gray took it willingly and handled it familiarly.

"Show us how you hit Albert Snyder before and after he hollered," cried the lawyer.

The witness stood on the platform in front of his chair. He grasped the weight firmly in both hands.

"I took it this way," he said, as though he were explaining a golf stroke. Then he raised the weight slowly over his right shoulder. Wallace urged him to show the blow. Gray brought the weight down.

"I know I couldn't have struck very hard," he said. He was very calm—and he didn't break, this little man who has nothing to lose.

Two white-coated hospital attendants stood in the aisle directly in front of

Gray, ready against a possible collapse. The moment he grasped the weight Gray's mother hurried from the court room. Even a mother could not bear that kind of drama.

"Why didn't you cry like you did yesterday when you told of this?" Wallace asked Gray. "Is it because it is easier to do the actual than to tell of it?"

There was no reply.

Then Judd carefully handed the weight—the iron bar that his hands had not felt since the night he bashed the head of the sleeping husband—to an attendant. If it had dropped, there would have been business for the white-coated internes. Gray sat down. His hands had not trembled.

The following description of a situation reported by Leonard L. Cline of the *Baltimore Sun* is not exaggerated but it contains enough details to make it realistic. Although it is apparently told in the words of one witness, and has a characteristic tone, its simplicity and clarity are the result in large measure of the reporter's own narrative skill.

A sentimental crisis was reached late this afternoon when the elder Daniels, the most pathetic figure in Morehouse parish, broken and enfeebled by terror and the bereavement of the last six months, was called to the stand. Mr. Daniels could hardly get through the ordeal. There were times when his voice would quaver and break, and when his words came one at a time, at intervals, with obviously a great strain to speak at all.

Mr. Daniels told how the night riders whipped him but an hour or two before Watt's captors put the son on the rack.

"It was the morning of the baseball game at Bastrop that I last saw Watt alive," the old man said. "He went over to see the game in his car and I went over in mine.

"I was coming home after the game about sundown, when we ran up against a car stalled across the road. When we stopped, a bunch of men, wearing black hoods, jumped out from the woods. Two of them came up to my car and one of them pointed a pistol, I think it was a .45, at me and the other a shotgun, and

they ordered me to get out. They blindfolded me with a red bandanna handkerchief and tied my hands and led me off to one side of the road, in the woods a little way, and made me sit down.

"There were a lot of cars on the road when they got us. Forty or fifty other cars were stopped. A little while after I sat down I heard a commotion over on the road. I heard a little girl screaming and I recognized it as the voice of my little granddaughter. She was crying, 'Oh Watt, Oh Watt, Watt.'

"But I didn't know that they had caught Watt and Richards until after they had let me go.

"Well, they put us all in cars again and took us somewhere I know they drove us back toward Bastrop because the smell of the pulp mill got so strong. We drove for about an hour, and then they made us get out. We must have been in a pine woods.

"They told me they wanted to find out what I knew about the shooting of Dr. McKoin, and I told them I did not know anything about it. They said they'd hang me if I couldn't tell them anything about it. So they took my pants down and made me lie down and they whipped me. Now I don't think they took more than four or five licks at me, maybe only three. It must have been a leather strap that they hit me with. When I got home my legs were black as my coat.

"They did not hit me so hard, but they hit W. C. (referring to Andrews) until he could hardly grunt. We were lying about five or ten feet apart, I guess. They whipped him until he was so weak from exhaustion he couldn't cry any more."

"Did you recognize any of the men that made you get out of your car, and blindfolded you?" Mr. Daniels was asked.

"No, only that the man that had charge of me until they took us over to Colliston and let us go was at least a head taller than I am."

"How tall are you, Mr. Daniels?"

"I'm—," the old man hesitated drearily "I really don't know," he said. "About 5 feet 6 inches. After they whipped me I said to this man, 'My friend, my eyes feel as if they were burning up; this blindfold is too tight.' After that he loosened it a little for me. I don't suspicion who that man was."

*Form of Testimony.*—Indirect quotation is the form in which testimony is most frequently reported because it represents a condensation of a great number of questions and answers, many of which are unimportant. Some testimony, however, is so important or is given in such an effective manner that it needs to be quoted directly. When verbatim testimony is to be quoted at length it is better for the reporter to arrange with the official court reporter to provide him with a portion of the transcript of the evidence; for it is a more natural representation of the witness' words. The following testimony of a nervous witness who is not telling the exact truth is much more effective because it was taken verbatim from an official transcript of the stenographic report:

"No, I cannot," began Mr. Schepps. "I know, in that connection I went to—I remember I saw Willard Tarr, of Philadelphia, and urged him to make a contribution. I do not know just when that was. The details I do not remember, but I know there had been a personal loan by him and I think there was—I urged a contribution by some and I heard later on he made it."

When testimony is quoted directly and extensively it may be put in the form of a catechism. A combination of these methods is usually best, and the various parts ought to be joined by a connective, such as "Mrs. Robey's testimony in the main dovetails into that of Phillips." An example of the combining of direct and indirect quotation follows:

Next came the Rev. Peter Dinwiddie, pastor of St. Mark's. He gave detailed testimony about the church building and alterations made on it.

Then Mrs. Mary Wiggins tripped up to the stand—a dentist's wife, energetic and positive. The night of the crime four years ago she lived at Westlake and Fourteenth streets.

"Around 10 o'clock I and my husband heard four shots," she testified.

"But your husband's deaf, isn't he?" purred the defense lawyer, Graham Barnes.

"He wasn't deaf then," the witness explained.

"And the order of the shots?"

"First three—then one." The witness took a pointer and tapped on the floor to illustrate the rate of the shots.

Attorney Barnes' interrogation then reverted to the grand jury investigation last August.

Q. But didn't you tell the grand jury that it was first one and then three?

A. I said then there was an interval, but I wasn't sure whether it was, and I reconsidered that and thought to myself.

Q. You reconsidered? When did you reconsider it?

A. When my husband and I were talking it over.

Q. And before you reconsidered did you talk with any of the representatives of the State?

A. I did not.

The Court: Let me get the point straight. What you are saying now, as I understand it, is that you are not sure whether it was first three shots and then one shot or first one shot and then three?

The Witness: There is a possibility that I might be mistaken; that is the reason.

By Attorney Barnes:

Q. At the time these shots were fired, it was a very black night, wasn't it?

A. Yes, indeed.

Branch Wiggins, the woman's husband, followed on the stand and confirmed the four shots. He is deaf and the lawyers had to shout at him.

It is not possible to give concrete directions as to how to take notes. The reporter who has a clear conception of the issues of a case usually makes brief notes and, when he perceives that certain parts of the testimony are worth quoting verbatim, takes them down in full. Sometimes, for very important trials, two reporters work together, one being assigned to write the lead and the other a "running" account of the trial. From time to time they relieve each other. When only one reporter is working it is best for him to write as complete a running story as possible and to make notes on a separate sheet of paper of facts to feature in the lead. A rule-of-thumb method will not be successful for many reporters because each reporter learns from practice how to transcribe testimony and how to mark his notes



for emphasis and sequence. In writing the lead each day, however, he should always repeat the nature of the charges for which the defendant is standing trial.

*The Reporter Thinks Ahead.*—The reporter who makes an interesting and fair report of a trial has a more difficult task than the reporter who prepares a mere speech report; his work is not simply the taking of notes and verbatim testimony to be made into a news story. In the first place, he should familiarize himself thoroughly with the case before it comes to trial. By reading the newspaper reports of the crime and the investigations which followed it and by conversing with attorneys on both sides, he obtains a clear conception of the issues and some understanding of the character of the principals. Consequently, as the trial proceeds, he understands the significance of the attorneys' motions and of the evidence and has an idea of what is to follow. He is, therefore, not wholly unprepared when certain startling disclosures are made in testimony, and he knows what emphasis to give to them. By consulting with attorneys during recesses of the court he can learn some facts which are worth advance notice or worth remembering during the course of the trial. Whether or not the defendant will testify, whether or not a "surprise" witness may be introduced, what instructions to the jury each side will ask the Judge to make, whether or not certain attorneys will withdraw—these are a few of the things to be reported that are not revealed in the testimony of witnesses.

It seemed probable at the conclusion of today's evidence that former Sheriff Millard Dade would be acquitted tomorrow on the bribery charge as a result of a directed verdict.

Beginning as a technical contest over the question of application of the statute of limitations, the trial proceeded this week apparently on the assumption that the statute did not apply.

The defense has contended that the bribery charge cannot be prosecuted because the alleged offense was committed in 1921. But the state has argued that the statute of limitations does not apply because an active conspiracy existed to keep secret the alleged bribe.

Upon this point Judge Lewis C. Monroe has not yet ruled because he declared his intention of permitting the state an opportunity to prove that a conspiracy existed.

Today the defense made little effort to disprove the bribery charge but harped continually upon questions bearing upon the secrecy of the alleged transaction. Morris Broward, chief defense attorney, will move tomorrow for a directed verdict of "not guilty" on the ground that the state has failed to prove that a conspiracy existed.

Such a verdict, in the light of the strong testimony introduced to prove the bribery charge, would result in a moral victory for the prosecution—and incidentally for the Tate-Wilson faction of the local Republican organization—even though the former sheriff should be acquitted.

The reporter should try also to divine the principal issues during the early part of the trial in order to make them clear to the reader after the testimony has revealed them. For example, the innocence or guilt of the defendant frequently turns upon identification of the person who actually committed the crime and it is incumbent upon the reporter to report carefully the evidence of identification and the defense or alibi; or the issue turns upon some circumstance, such as proof and denial that the fatal bullet was fired from the defendant's gun; or the issue turns upon motive, making it necessary for the reporter to identify clearly the persons who testify as to the actions and conversations of the defendant and his connections with the victim or the victim's wife, or sweetheart, or husband, or brother. The following excerpts from news stories illustrate how reporters explain for their readers the significance of certain portions of evidence; they illustrate, also, the extent to which the reporter must understand the issues involved in the case:

(1)

Two other physicians were called to the stand by the state to forestall the prospective contentions of the defense that Miss Duncan was not in good health when she was brought back from Mexico.

(2)

The latter question which Hahn also refused to answer, on advice of counsel, *was designed by Attorney Roberts to impress upon the jury's mind that Hahn was virtually the sole owner of the land company and that Rogers, his brother-in-law, was a mere dummy stockholder.*

(3)

The defense counsel *paved the way for Lewis' refusal to take the witness stand, saying that the law does not compel a defendant to testify, and if he doesn't, the jury must not make any improper deductions because of that fact. If Lewis does not take the witness stand, the state will not be able to show that he is a former convict.*

(4)

One ruling by Judge Z. L. Moody tomorrow may determine the guilt or innocence of Haines and Allen. The ruling is on the question of admitting as evidence the confessions made by Haines and Allen to the legislative investigating committee last winter.

The state is depending upon the admission of these statements to force Haines and Allen to the witness stand, where they will be cross-examined, and then and there to try to prove by their own words that they knew all about the highway paving contracts.

In many criminal trials the issues are so involved that a mere reporting of testimony does not permit of its being easily understood by the reader. In such cases, the reporter ought to condense the testimony into "points."

The testimony of the state's witnesses today purported to show:

1. Dr. Abrahams was told the girl was married and that her husband could not afford to have a child, although agreeing to pay the surgeon \$175 to avoid having one.
2. That after performing the abortion, Dr. Abrahams, through neglect, allowed the girl to develop a fever which ultimately caused her death.
3. That a nurse suggested to Dr. Abrahams that he try another operation which might save the girl's life, but that Abrahams said "No, she has no money."

4. That Dr. Abrahams also spurned a suggestion to send the girl to the county hospital when her life might have been saved, because he feared an investigation would result.

5. That the surgeon had refused to allow a priest to attend the girl in her dying moments, fearing discovery of the criminal operation.

6. That he had falsely issued a death certificate, giving the cause of death as heart disease.

**Defense Testimony.**—After the state has rested its case the defense counsel makes an opening statement, giving the jury an outline of the defense testimony to be introduced. Then the defense attorney introduces the witnesses subpoenaed by the defendant. Their testimony is essentially in the nature of rebuttal. Not only do defense witnesses testify to a contrary set of facts, but they testify as to the character and reputation of the defendant. In addition to eyewitnesses and other principal witnesses, there may be alibi witnesses, character witnesses, and expert witnesses. The defense testimony is also frequently in the nature of justification, and new facts are alleged that have a definite bearing upon the issue; these facts the reporter should place in their proper relation to the state's allegations.

It sometimes happens that, at the conclusion of the state's testimony the defense, instead of calling its witnesses immediately, moves the court for a *directed verdict* of not guilty on the ground that the state has failed to prove the defendant guilty. This motion is sometimes made by defense attorneys perfunctorily, but there are often valid grounds for such a motion. The motion is most frequently sustained by the Judge in such cases as those that require two witnesses to the criminal act but in which the state has been able to produce only one, usually an accomplice of the defendant. But the defense motion for a directed verdict is also sustained when the defense demurs to the evidence, that is, admits that whether or not the facts submitted by the state are true they are not legally sufficient to warrant a conviction; for example, that the prosecution has failed to establish a *corpus delicti*.

Sheriff Millard Dade was found not guilty tonight of the charge of having conspired to bribe Governor Edgar Martin in 1921, on a verdict instructed by Judge Lewis C. Monroe.

Judge Monroe told the jury, prior to the introduction of defense testimony, that the sole reason for taking the case away from them at that time, on a motion by the defense for a directed verdict, was because the state had failed to prove that the bribery conspiracy had been concealed in the legal meaning of the term.

Failing to prove concealment, even though the fact of the bribery charge were proved, there is no remedy in law because the statute of limitations ran against any such charge two years ago, Judge Monroe explained.

**Rebuttal Testimony.**—After the defense has rested its case, the prosecution ordinarily introduces a few witnesses in rebuttal. These witnesses, however, cannot testify concerning new facts, but only in regard to facts alleged by the defense. The defense is not usually allowed the privilege of introducing witnesses in surrebuttal because it is presumed that it had sufficient opportunity before it rested its case to rebut the testimony of the prosecution.

**Closing Arguments.**—Following the conclusion of the defense testimony and the state's rebuttal, the attorneys for each side make *arguments* to the jury, summing up the evidence. The Prosecuting Attorney has both an opening and a closing argument, except in Minnesota where the defense attorney speaks last. In some minor cases the prosecution does not make use of an opening argument but only replies to the argument of the defense attorney. If two or more defendants are on trial at the same time and each has an attorney, each attorney is entitled to present an argument of summation. When two or more attorneys are engaged on each side the Judge divides the time among them and limits each address. Where more than one person is being tried on the same indictment, the attorney for the first person named in an indictment makes the first of the summations. Although there are restrictions upon the nature of the closing arguments, the attorneys usually stretch the evidence as far as they can and introduce a certain amount of extraneous

matter that is calculated to influence the jury; some attorneys have great reputations as orators, but oratory in the court room is not indulged in as much as formerly.

Portions of the attorney's summations are usually included in reports of trials. In order to be fair, the reporter ought to divide the space nearly equally between the two sides. In some trials much of the summation is the sheerest kind of falsehood; it sometimes contains obviously illogical inferences and even aspersions upon the reputation of upright citizens who were witnesses. Because the summation represents lawyers' conclusions and not facts, the reporter can often serve the public interest by exercising a censorship upon some of the statements and conclusions except where he believes that publication of them will inform readers of the insincere character of defense or prosecution adopted by the attorneys. The following quotation, for example, is probably not true:

The defense counsel attacked Senator N—, who appeared as a government rebuttal witness to assert that it is "the custom and usage" of senate committees to cross-examine witnesses in the absence of the quorum required by senate rules.

Senator N—, the defense counsel said, was the author of the resolution which induced the Teapot Dome investigation committee to probe the Continental Trading company deal, and "when he saw the case behind which he and his political cohorts stood was collapsing, he was ready to swear to anything under high heaven to bolster it up."

**The Judge's Instructions.**—While attorneys are making the closing arguments, the Judge is usually preparing his instructions to the jury. Sometimes the instructions are entirely oral, but usually they are written and a copy is handed to the foreman of the jury after the Judge has read them aloud. In cases in which much appears to depend upon the character of the instructions the attorneys for each side hand to the Judge suggested instructions. The Judge may accept either side's suggestions in  *toto*  or in part, or he may reject them entirely in favor of what he considers the proper instructions.

The instructions, which are aimed to help the jury reach a

proper verdict, deal with both the law and the evidence. The Judge first explains to the jury the law which concerns the charge of which the defendant should be found guilty or not guilty; for example, he explains the difference between murder and manslaughter, first and second degree murder, and justifiable homicide. Next he explains the evidence, telling the jury to remember that the burden of proof is upon the prosecution and that the jury must be convinced beyond a "reasonable doubt" of the defendant's guilt.

In most jurisdictions the Judge does not have the right to express his opinion concerning the evidence but many persons who propose to reform the criminal section of the judicial code are suggesting that the Judge be permitted to comment upon the testimony of witnesses. Federal judges are now permitted to comment upon the evidence in a case provided that they make it plain to the jury that the opinions they express are merely their own opinions. English judges always review and sum up the evidence in criminal trials, expressing their opinion concerning the weight and importance of the evidence and commenting upon the character and conduct of witnesses, even, in some instances, expressing their convictions as to the innocence or guilt of the defendant.<sup>10</sup>

Usually, the Judge's instructions ought to be reported carefully. In many cases the evidence reveals that the defendant is guilty but it does not appear to be conclusive as to precisely how guilty he is or of exactly what he is guilty. To the newspaper reader who has been following the reported evidence the Judge's instructions are therefore significant. The reporter should make plain to the reader exactly what alternative verdicts the instructions permit the jury to return. The reporter should also consult the statutes so as to tell his readers what the penalty is for each of the possible verdicts, whether death sentence, life imprisonment, twenty years' imprisonment, etc. The reporter, also, should heed the instructions to the jury because in many cases the instructions furnish grounds for a new trial or an appeal.

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<sup>10</sup> For examples of the English judges' method of reviewing the evidence, see any of the volumes of *Famous British Trials*, for example, "The Trial of Madeline Smith."

In the course of a murder trial in Boston a newspaper reporter who neglected to report carefully the Judge's instructions disappointed his readers who had been following the evidence in the trial. Three men had been engaged in a robbery. Two had gotten away with the spoils, and were seated in an automobile awaiting the third. But the third ran into a watchman, who it is supposed, recognized him, and the escaping robber shot him dead. All three men were charged with first degree murder and placed on trial. The public was extremely interested to know "How can they send two men to the electric chair for killing a man upon whom they never laid an eye?" The three men, including the two who did not see the watchman, were convicted of first degree murder and put to death. If the reporter had heeded the Judge's instructions and recognized their importance, the readers of his paper would have understood that a Massachusetts statute of 1852 defined first degree murder as (a) murder committed with deliberate, premeditated malice aforethought; (b) murder committed with extreme atrocity or cruelty; (c) murder committed in the commission of a crime. The question of law came on whether or not the two companions of the man who did the shooting were at the time of the homicide engaged in the commission of the crime of robbery while armed. The two men contended in defense that the crime was at that time completed as far as they were concerned, but the Judge ruled that the crime was still in process of commission and could not be considered completed until all participants had actually made their escape. He made this statement in his instructions to the jury, and the jury had no alternative but to find the men guilty of first degree murder.<sup>21</sup>

**The Verdict.**—After the jurors have received the instructions of the Judge, a Bailiff conducts them to a jury room where they deliberate. They are required to reach a unanimous verdict. In some clear-cut cases the jury, however, is able to reach a decision without leaving the jury box, but this is an infrequent occurrence. Immediately after entering the jury room the foreman takes a ballot of the jurors. If there is more than one count in the indictment or if more than one defendant is being tried on the same indictment, the jurors take a separate ballot on each count and on each defendant. Sometimes the jurors require only a short time to reach a unanimous agreement, but frequently it is necessary for them to deliberate over certain portions of the evidence about which they disagree.

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<sup>21</sup> Harry B. Center, in *Journalism Bulletin*, March, 1927.



Some juries find they cannot reach a unanimous verdict according to the Judge's instructions and, consequently, return to the court room to request the Judge to clarify the instructions. Theoretically, a jury is supposed to be locked in its room without food, excepting water, and required to remain there until a verdict can be agreed upon, but practically this is no longer true. Juries when apparently at uncomprising disagreement return to the court room and report that they are unable to reach an agreement; in that event the Judge either sends them back to make another effort or he declares a mistrial. Ordinarily, when there is a hung jury a second or even a third trial is held.

It is important for the reporter to tell his readers how long a time was required for the jury to reach a verdict. Ordinarily, a jury does not deliberate past midnight but is allowed to retire for the night and to resume its deliberations the following day. Because it is necessary that the Judge and the defendant be present when the verdict is read, a jury, whenever it reaches a verdict late at night after the Judge and the defendant have left the court room, is permitted to write out a "sealed verdict" and retire until the following day, when the verdict is read in open court; a sealed verdict cannot be returned, however, in trials of capital offenses. A reporter waiting for a jury to bring in a verdict sometimes has a long vigil, but if the case is important he has no alternative but to wait. The reporter should be present not only to learn about the verdict, but to describe the effect of the verdict upon the principals and, if circumstances require it, to obtain statements from the attorneys and the principals. Of great human interest in many trials is the effect of a verdict upon the principals and, in some cases, upon the spectators.

Emil Cohen, a 17-year-old high school boy, rode out of the shadow of the electric chair today on the shoulders of his schoolmates.

On trial on the charge of murdering his 16-year-old sweetheart, Rosa Semon, he suddenly found himself free when Judge Thomas Waddell directed the jury to return a verdict of not guilty.

The boy's mother fainted in the court room. But when young Cohen rushed to

her and threw his arms around her she quickly recovered. The hundreds of cheering students who had been "cutting classes" for several days rushed down the aisle, lifted Cohen into the air and carried him to the street among cheers.

"I didn't shoot Rosa, and you fellows know it," he cried.

"Of course you didn't," shouted the throng.

Judge Waddell said he believed the boy had told the truth of the shooting being accidental, but only after he had "lied wretchedly" and caused great anxiety for himself and many others.

Because a verdict does not always conclude a case it is sometimes necessary for the reporter to obtain statements from attorneys on one or both sides concerning future action in the case.

Doris Barry, acquitted today on the charge of murdering Walter Yerkes, her sweetheart who declined to become a husband, was found guilty of manslaughter.

The verdict carries with it an indeterminate sentence of from one year to life imprisonment in the state penitentiary.

The jurors, it is understood, thought that about eight years would be adequate. *They deliberated for fifteen hours.*

Pleased that she had escaped a sentence for murder, for which the minimum sentence is fourteen years, and dismayed that a verdict of not guilty had not sent her back to her mother, the Barry girl was bewildered and inarticulate.

Attorney Malcolm Jenkins, who served as her defense counsel, said he would move for a new trial.

"This verdict," Mr. Jenkins said, "clearly, and by law, acquits my client of the murder charge. For it was either murder or not murder. There was no manslaughter element involved. Since these twelve men have decided that it was not murder, Doris Barry should be freed."

Following a jury's report the Judge sometimes criticizes a verdict.

Walter Goldberg was arrested with a loaded revolver in his hand Feb. 5 during an attempted pay roll robbery in the office of the Tri-State Coal Company. Dennis Ellis, father of five children, an innocent bystander was killed by the holdup man.

Yesterday, despite the instructions of Judge Colin Miles that an accomplice is just as guilty of murder as the man who fired the shot, Goldberg was acquitted by a jury after a short deliberation. The judge evidenced surprise at the verdict and ordered the jurors to their seats until the regular motions were disposed of.

"As a rule I do not comment on the findings of a jury," Judge Miles said to the twelve men. "I cannot understand by what power of reasoning you could return a verdict of not guilty in this case."

Goldberg, who persistently refused to help the police in search of his two robber companions, would have walked from the court room free save for the quick action of Prosecutor Z. L. Montgomery, who hastily drew up a complaint of assault with intent to commit robbery on the same case.

Despite the protests of Attorney M. E. Torrence, of the defense, Judge Miles ordered a bond of \$10,000 pending hearing on the complaint this afternoon. Bond was not forthcoming and Goldberg was taken back to jail.

"The defendant was caught red-handed with a revolver in his hand at the scene of the crime," said the Prosecutor. "We presented as convincing a case as has ever been given a jury and yet a not guilty verdict is returned. I wonder if juries expect the prosecution to furnish them with a motion picture of the crime?"

**The Reporter's Relations with Jurors.**—Usually, it is against the public interest for reporters to interview jurors in regard to their verdict after it has been reported to the court; for jurors, after rendering a verdict, ought not to be subjected to threats or insults as a result of publication of their secret deliberations. Sometimes, however, no harm comes from the practice of interviewing jurors in regard to their deliberations *after they have rendered a verdict*. In a case in which the jury has deliberated a long time and, especially, after a mistrial has resulted, it is important for the reporter, when it serves the public interest, to learn how the balloting stood at various times.

An unofficial test ballot lined up, it was said, ten jurors who believed the defendants shot in self-defense. The first official ballot is said to have revealed

eleven jurors in favor of an acquittal with one man clinging to the attitude that some mild punishment ought to be given. The second ballot was the last. It was unanimous for acquittal.
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In no circumstances, however, ought the press to publish stories which tell about the status of juries while their deliberations are in progress or while a case is being tried in the court room. "There is no element in the law pertaining to juries more fundamental or necessary than the principle that the process of their deliberations is absolutely secret."<sup>12</sup> There have been times when juries required several hours to decide a case in which there was great public interest, and the newspapers, conscious of the fact that the climax of interest had been reached, have tried to sustain interest by reporting the supposed secret deliberations of the jury. This practice is against the public interest and ought not to be permitted by the courts. Interviewing jurors during the course of the trial and prior to the retirement of the jury is obviously against the public interest; happily, it is not often done.<sup>13</sup>

Reporters sometimes station themselves at the door of the jury room in order to learn the verdict from jurors or court attendants as the jurors file out of the jury room into the court room to make their report. This practice, which is resorted to in order to give the public immediate news of the verdict, is contrary to the spirit of our system of justice, but it seldom operates to frustrate the administration of justice. The enterprise of daily newspapers is of later development than the system of trial by jury, and the courts and the press ought eventually to work out methods for reporting trials which will accommodate the trial system to modern methods of newspaper making and which will not operate against the proper administration of justice. The excuse of newspapers that resort to unethical practices in reporting criminal trials is usually the "pressure of competition"; such a justification is a dangerous doctrine that would lead to

<sup>12</sup> Andrew R. Sherriff, in *American Bar Association Journal*, Vol. XIII, No. 3, March, 1927, p. 132.

<sup>13</sup> A recent notorious instance of this practice was the publication of an interview with a woman juror in the Henry Ford-Aaron Sapiro case in Detroit, in 1927, by a sensational Detroit newspaper. As a result of the interview the judge declared a mistrial.

the utter destruction of society if applied to all modern social intercourse.

Newspapers, however,—it ought to be said in their defense—serve the public interest by their positive acts in reporting criminal trials more often than they interfere with the administration of justice. For example, a present menace to the administration of justice is the practice of packing juries and fixing individual jurors; newspaper reporters who discover and report such practices are serving the public interest. Risking libel suits, newspapers are often able to warn the public of the dangers lurking in the criminal courts.

"Usually publicity at the trial will thwart any tendency to favoritism by the court. In one case on a charge of rape, the defendant, a politician of low order, had a reputation for slipping out of scrapes through influence. On the day of the preliminary hearing the court room was filled with representatives of various women's societies, and the man was bound over."<sup>14</sup>

Newspapers, however, cannot and should not be expected to be agencies for continuous scientific investigation of the administration of criminal justice. That is a burden to be borne by the entire community.<sup>15</sup>

**Motions in Arrest of Judgment.**—After a jury has returned a verdict which is unfavorable to a defendant, the latter may move for an arrest of judgment, alleging a defect in the substance of the indictment or some irregularity of record. The motion is virtually equivalent to the plea in abatement and the motion to quash the indictment that are sometimes made in the early stages of a trial.<sup>16</sup> If the court sustains the motion for arrest of judgment, the defendant is discharged but may be prosecuted on a new indictment.

**The Sentence.**—The verdict of a jury is merely a finding of fact and does not amount to a judgment of the court. It is the Judge who makes the judgment. In a criminal case the judgment is called a *sentence*. In federal courts the verdict of a jury is a mere finding of guilt or innocence, and the Judge, in com-

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<sup>14</sup> *Criminal Justice in Cleveland*, pp. 261-262.

<sup>15</sup> For a description of such an agency, as it operates in Chicago, see K. L. Roberts, "Watchdogs of Crime," *Saturday Evening Post*, Vol. CC, No. 15, pp. 45 *et seq.*

<sup>16</sup> *Supra*, p. 72.

report periodically to the probation officer attached to the court. In some states probation appears to be overdone; police are arresting numerous persons for crimes committed while they are on probation, and some judges are putting prisoners on probation who have been convicted of very serious crimes.

The Chicago Crime Commission reported that during June, 1927, Cook county judges sentenced 66 persons to penitentiaries and released 66 persons on probation who had committed felonies. The crimes with which the offenders released on probation were charged were: robberies, 9; robberies with gun, 10; assault with intent to rob, 2; burglaries, 12; larcenies, 15; receiving stolen property, 2; embezzlement, 3; forgery, 4; confidence games, 5; conspiracies, 3; other offenses, 3. The record for the entire year was about the same as the record for June.

It is not to be inferred from these statistics, however, that the principle of probation is unsound. Wherever the principle is adhered to conscientiously, as in Wisconsin, it has saved many persons from continuing criminal careers and has saved the state thousands of dollars for upkeep of criminals. Some newspapers attack the probation system in their communities without much regard for the realities. Only scientific bodies, like universities and crime commissions, are capable of analyzing the results of probation; one or two newspaper reporters is too small a staff to make a survey in a large community.

Statutes do not always provide a definite sentence for every crime but fix the time of imprisonment at "not less than" and "not more than" a certain number of days, months, or years. Such sentences are called *indeterminate* sentences, it being assumed that at some later date the state parole board will fix the actual term, depending upon the prisoner's behavior while in prison.

If a defendant is found guilty on several counts of an indictment or for more than one crime or is convicted of an offense when he is already under conviction for a previous offense, and the court orders that he shall begin serving one sentence at the expiration of another, the sentences are referred to as *cumulative* sentences. Ordinarily, however, when a defendant is found guilty on more than one count in an indictment the court orders the sentences to run *concurrently*.

**Suggested Reforms.**—The administration of criminal justice in the United States is in need of great reform. Merely to denounce the present practices, however, is ineffectual so long as the present critics persist in idealizing Justice. The administration of criminal justice will never be reformed by mere idealization. The human element in the system can never be got rid of; moreover, the system does not need to be completely overhauled so much as it needs the repairing of certain small and large cogs in its mechanism. By pointing out these deficiencies in its reporting of concrete cases the newspaper may serve the public interest. Several of the defects of the system have been mentioned in Chapters III and IV, but at this point it is well to list the most significant reforms that have been suggested.

1. Action by judges, members of the bar, and the police to punish and prevent the bribery and intimidation of jurors, especially the latter.<sup>17</sup>

2. Action to punish and prevent the perjury and enforced disappearance of witnesses brought about through subornation of perjury and threats of violence.<sup>18</sup>

3. Legislation to permit the Judge in state courts to intervene to a greater extent in the selection of jurors, and to allow the prosecution the same number of peremptory challenges as the defense in jurisdictions where a distinction prevails.

4. Legislation to permit the Judge in his instructions to the jury to comment with greater freedom upon the evidence and the character of the witnesses, as he may do at common law and as English judges do in criminal cases.

5. Legislation to permit the prosecution to call the jury's attention to the defendant's failure to testify in his own defense.

6. Correction of the abuse of the right of habeas corpus; to be brought about by judges exercising greater caution in issuing the writ.<sup>19</sup>

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<sup>17</sup> Cf. Lewis case, p. 78.

<sup>18</sup> Cf. Rongetti case, reported in the *Chicago Tribune*, Feb. 21-Mar. 15, 1927.

<sup>19</sup> "... No sooner had he been deposited in the chief of detectives' office than the telephone rang and a voice announced that a forthright writ of habeas corpus was out for the man in custody. In other words, he was to be produced in court immediately so the judge could decide whether or not he was being legally detained. . . .

"The prisoner obligingly explained that he had a lawyer; that he telephoned to the lawyer, by prearrangement, three times a day; and that the lawyer, failing to hear from him at any of these times, at once assumed that he had been picked up by the police and applied for a writ

7. Regulation of the practices of professional bondsmen which have resulted in the inability of the state to recover forfeited bail bond and the consequent temptation of criminals to "jump" bail; to be brought about by the adoption of a regulation to admit no person to bail who formerly has been convicted of a felony, and to forfeit bail bond with more frequency.<sup>20</sup>

8. Fewer continuances by judges upon application of the defense counsel for professional criminals.

9. Less recognition by appellate courts of technicalities when the manifest purpose of defense counsel is to cite numerous and unimportant exceptions in an effort to obtain reversal.<sup>21</sup>

10. More severe sentences for defendants convicted of receiving stolen goods.

11. More dignity in the courts upon the part of the Judge, attorneys, clients, and spectators, and the prohibition of the practice of photographing trial scenes by newspapers.

12. The establishment in large cities of local endowed crime commissions to check the records of trials, probations, and paroles of professional criminals, and to publish periodic reports; newspapers cannot perform such an enormous task nor can governmental agencies be entrusted with it.

13. A determined effort by citizens to divorce politics from the

of habeas corpus for him. . . . His statement was further confirmed by a Chicago telephone girl who applied for a position. In giving her qualifications she stated that she had been what is technically known as 'on the box' for a firm of criminal lawyers. In other words, she handled the incoming calls of criminal clients. Each client had a specific hour for calling in. If a client was supposed to call at 2:40 p.m. and failed to do so, the young lady on the box notified one of the clerks and the clerk immediately put on his hat, went to court and filed a petition for a writ of habeas corpus for the delinquent caller."—K. L. Roberts, "Watchdogs of Crime," *Saturday Evening Post*, Vol. CC, No. 15, 1927, p. 45.

<sup>20</sup> See p. 62.

<sup>21</sup> Because the word "the" was omitted from the phrase, "against the peace and dignity of the State of Missouri" in an indictment the appellate court held the indictment void. (*State v. Campbell*, 210 Mo. 202.) A Georgia appellate court reversed a case on the grounds that the indictment charged the defendant with having stolen a hog with a clip off the right ear and a slit in the left ear, whereas the clip was off the left ear and the slit was in the right ear. (*Robertson v. State*, 97 Ga. 206.) The Illinois Supreme Court set aside the conviction of Philip Goldberg on fifty counts because, in one of the counts, his name was spelled "Holdberg" (*People v. Goldberg*, 287 Ill. 218). A notorious Chicago criminal lawyer, in appealing a murder case, listed sixty-six exceptions, hoping that one of them might be sufficient to reverse the sentence of his client (*Chicago Tribune*, Mar. 15, 1928). For a discussion by a law professor of the frustration of justice through technicalities, see R. M. Perkins, "The Great American Game," *Harpers Magazine*, Nov., 1927, pp. 750-758.



administration of justice by defeating incumbent judges and prosecutors who have improper relations with professional criminals.<sup>22</sup>

14. Greater efforts by local bar associations to debar crooked attorneys who specialize in criminal practice.<sup>23</sup>

15. The exercise of greater caution by judges in admitting to parole professional criminals; to be brought about by a closer examination of the defendant's record by the Judge and the District Attorney.

16. More drastic laws to confine professional criminals convicted of several felonies.

17. Reform of the practice of permitting expert witnesses to testify for one side or the other in cases in which insanity is offered as a defense; to be brought about by the appointment of one or more experts by the court as the court's witnesses or as officers of the court.

18. Bestowal of more power upon the District Attorney in some jurisdictions to permit the institution of criminal prosecution by means of the information process, and the divorce of the office of District Attorney from politics.

### EXERCISES

1. Criticize the news story of the Gray-Snyder murder trial on page 91, from the point of view of (a) craftsmanship; (b) good taste; (c) ethics.
2. Criticize the following news story from the point of view of (a) craftsmanship; (b) fairness (the name of the defendant has been changed):

John Rucker, who has been a prohibition spy in these parts, splitting fines for his snooper fees, today was held to the grand jury without bail on a charge of the murder of an accused bootlegger, William Petroff.

As witnesses before Justice E. V. Rohlen retold the story of how Petroff, who fought in France for America, was

<sup>22</sup> "A judge facing reelection has had to insure his survival through one or several of the following ways: catering to petty bosses who control votes; patronizing certain influential groups—racial, religious, or industrial; general publicity in the newspapers or otherwise. Whichever way the premium is paid, the judge and his high office are degraded."—*Criminal Justice in Cleveland*, p. 260.

<sup>23</sup> As a rule, the majority of criminal cases are defended by a few lawyers, who specialize in criminal practice. "In 492 criminal cases begun in the Court of Common Pleas (Cleveland) in 1919, more than one-third of the cases were defended by one-twelfth of the lawyers appearing in all the cases."—*Criminal Justice in Cleveland*, pp. 233-234.

slain, Rucker, who shot him, laughed aloud frequently as contending counsel clashed. At last, after an especially hearty guffaw was delivered by the prisoner, his own attorney leaned over and apparently warned him, for from then on Rucker held his mouth with his hand when he found occasion for humor.

Friends of the dead Petroff did not laugh. They had met earlier with the prosecutor, State's Attorney William D. Knight, and with Attorney Malachy J. Coughlin, of Chicago, specially retained, and they pleaded that Rucker be sent to the electric chair.

Rucker, as it was shown by the evidence, operated under the "spotter" ordinance in force in South Beloit, Ill., where Petroff lived and where he was killed. Under the ordinance, as it was explained in court by Chief of Police William Moody of South Beloit, any person may spy upon prohibition law violators, inform upon them, and be paid 20 per cent of the fine assessed by the city court.

Chief Moody admitted, however, that Rucker acted without authority in carrying a weapon, in flashing a star, in seizing evidence, and in making an arrest—in addition to his admittedly clearly illegal act in shooting Petroff. The young man, Moody said, had been acting for some time as a spy for Chief of Police Frank Lanphier of Beloit, and before that was engaged in the same sort of work for other agencies.

In the case of Petroff, he had set two drinks of "white mulc" upon the bar, at Rucker's request, and after Rucker produced money to pay for it, Rucker then drew his revolver, according to the evidence, and shouted exultantly, "Ha, ha, I've got you now!" Petroff made a move to sweep the glasses and their contents to the floor, and Rucker fired his revolver, inflicting a fatal wound.

Then leaving the wounded victim on the floor, the self-appointed dry sleuth calmly took up the glasses, poured the contents into a bottle, arrested Petroff's bartender, John Ray, and drove with Ray to lock him up, witnesses declared. Then Rucker told Chief Moody that he had shot a man, and he'd better call a doctor, it was testified. Some hours later Petroff died.

Members of the Women's Christian

Temperance Union were in attendance at the trial, which brought many townsfolk from South Beloit and from the surrounding country to Rockford. Since Rucker has been locked up in jail he has been visited by W.C.T.U. workers. He has received gifts of fruit and flowers from the women. . . .

Rucker, a small man, with hair sleeked back from his low brow, was actively interested in all the proceedings. In addition to his laughter he twirled his thumbs complacently as the testimony went on.

Earlier in the day he had called attention to what he termed the glory attendant to Petroff, his victim, because of his war record.

"I am in the National Guard of Wisconsin myself," he said.

Upon investigation it was learned that when the guard was encamped a year ago Rucker failed to appear and was marked a deserter. When he was four days overdue he was captured by the sheriff at Janesville and taken forcibly to camp, it was learned.

When Carl Swenson, another of the defense attorneys, who is also city prosecutor of Rockford, was informed of this, he questioned Rucker about it and the prisoner admitted the circumstances, excusing them by saying he was "late in getting there."

3. Criticize the following news story from the point of view of ethics:

Deliberating on the fate of five boys charged with killing a west side grocer in a holdup, a jury in Judge Harry B. Miller's court, after more than two hours, stood ten to two for a life sentence for all five, it was reported. The two jurors who would not agree with the other ten were said to be holding out for the death penalty. . . .

The jury retired at 5 p.m. It was reported that the twelve men at once agreed that all five youths were guilty, and then started an argument as to the punishment. They balloted on the penalty for Cios, as the killer, and Balcrewiak, who went into the store with him. This is said to have resulted in a vote of six for death and six for life.

Further argument followed. The jurors could not agree on the two. They

balloted on each youth separately and got nowhere, balloted upon them all collectively, went back and balloted on them separately again, but at no time did they come near agreement, it was reported.

Between the various ballots little groups held conference in the corners of the room. In the end they were heard to say they could not make distinction among the five and continued balloting, the result apparently remaining the same—ten for life imprisonment for them all, two for death in the electric chair for them all.

4. Speculate as to the method employed by the reporter in obtaining the information contained in the story in Exercise 3.
5. Write a criticism of the Remus trial at Cincinnati based upon an examination of newspaper files from Nov. 15 to Dec. 30, 1927.

## CHAPTER V

### CIVIL TRIALS

THE civil courts are established to secure citizens in their rights. The law provides remedies whereby a citizen may obtain compensation for injuries done to him, prevent an injury being done to him, and compel another to perform an act which, if not done, would result in injury and loss. Compensatory proceedings are usually called *actions at law*, and preventive and compulsory proceedings are usually called *suits in equity*.

**Forms of Action.**—Of the actions at law there are three general forms, namely, *actions to recover land*, *contract actions*, and *tort actions*. There are various forms of each of these three kinds of actions but it is not necessary for the newspaper reporter to distinguish between any of them except the different forms of tort action. A tort is a legal wrong done to a person independent of a contract, as when one is injured by another's automobile; the most common forms of tort action are trespass, defamation (slander and libel), deceit, trover (that is, conversion of personal property), and replevin.<sup>1</sup>

**Starting a Suit.**—When a person (*plaintiff*) desires to invoke the law to secure himself in his rights he employs an attorney to file an action in a court of record. An officer of the court immediately notifies the adverse party (*defendant*). The latter employs an attorney who either advises his client to offer to settle the issue out of court, or who prepares a defense which he files in the court. If a defense is filed, the Clerk of the court docket the case for trial and, in the course of time, it is heard and determined.

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<sup>1</sup> Because replevin is such a common form of tort action the reporter ought to understand it. It lies to recover personal property unlawfully held when the plaintiff desires the specific property returned rather than damages for the loss of the property.

Ordinarily, a suit is instituted when a plaintiff files a *declaration*, that is, a paper which sets forth the fact and extent of his injury or claim and in which he prays the court to grant him relief. In some jurisdictions the declaration is known as a *complaint*, a *bill*, or a *petition*. In most states, however, suits may be started without the immediate filing of a declaration provided that the plaintiff's attorney files a *præcipe* (i.e., a "command") with the Clerk directing him to issue a *writ of summons* to the adverse party. Ordinarily, however, the attorney files the *præcipe*, the declaration, and the summons simultaneously, and the Clerk immediately indexes the suit, puts the seal of the court upon the summons, and directs the Sheriff to serve the summons on the defendant. A fee of a few dollars must be paid before the summons will issue because the private parties must pay the Clerk and the Sheriff's Deputy for their work.

The form of a *præcipe* follows:

THE ELLIS LUMBER Co.  
a corporation  
vs.  
W. C. BATES

SS { IN THE COURT OF COMMON PLEAS  
STATE OF OHIO  
HAMILTON COUNTY

To the Clerk, Greeting:

Issue summons in the above case, returnable May 25, 1927.

JOHNSON & JOHNSON  
*Attorneys for Plaintiff*

The form of a summons follows:

STATE OF OHIO: COURT OF COMMON PLEAS: HAMILTON COUNTY

THE ELLIS LUMBER Co.  
*Plaintiff*  
vs.  
W. C. BATES  
*Defendant*

Case No. 1000000  
SUMMONS

The State of Ohio, To the said Defendant:

You are hereby summoned to appear within twenty days after service of this summons, exclusive of the day of service, and defend the above entitled action in the court aforesaid; and in case of your failure so to do judgment will be rendered against

you according to the demand of the complaint, of which a copy is herewith served upon you.

P. O. Address:

530 Grand Avenue  
City of Cincinnati  
County of Hamilton  
State of Ohio.

JOHNSON & JOHNSON  
*Attorneys for the Plaintiff.*

After a summons has been served on a party he usually files an *answer*, or a *reply*. He may, however, merely file an *appearance*, which signifies his intention of filing an answer at a later date; the appearance is merely a formal note addressed to the Clerk and signed by the attorney for the defendant, directing the Clerk to "enter my appearance" for the defendant. When the defendant files an answer it is numbered and indexed by the Clerk and placed in a temporary file or box where newspaper reporters may examine it, together with other papers placed there during the course of the day. Although many suits that are filed never come to trial, the fact that they are filed is reported in the newspapers, sometimes at great length.

**Pleadings.**—All of the papers filed in a suit preliminary to the actual trial are called *pleadings*. The purpose of pleadings is to eliminate irrelevant and extraneous matter from the dispute; that is to say, to furnish a common issue upon which the dispute may be heard and determined. Without a system of *pleading*, litigation would be almost as confused as are the current disputes of the various literary and art critics who disagree in regard to the fundamental purposes and principles of art. In lawsuits the pleadings, therefore, provide a basis of the proof to be submitted at the formal trial by the testimony of witnesses and the exhibits of documents. Whenever the pleadings reach a point at which one party avers a fact or a set of facts and the adverse party denies the fact or set of facts, the pleadings cease and the trial begins; usually a jury is impanelled to decide the issue of fact. Formerly pleadings were long drawn out and constituted a sort of game in which the most clever lawyer won out by technicalities.<sup>3</sup>

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<sup>3</sup> Dickens' novel *Bleak House* is a story of the famous suit of Jarndyce v. Jarndyce, written to reform the evils of the system of pleadings and procedure in English courts of chancery. Although the novel was writ-

The American system of pleading is derived from the common law system of England, but it has been much simplified by statute. Although it has been superseded to a great extent by what is known as "code" pleading, it is still used in twenty American states and in the District of Columbia and Hawaii.<sup>3</sup>

Except in Louisiana, where the civil (Roman) law is in use, all other states have the system of code pleading.

**Common Law Pleading.**—When a person receives notice that a suit has been started against him he may either file an answer or a *demurrer* to the declaration. A demurrer is not a defense; it merely avers that, whether or not the facts alleged by the plaintiff are true, they do not constitute an action at law. For example, a former Sheriff, accused of fraud while in office, may, in a suit brought against him, file a demurrer, averring that, whether or not the facts alleged are true, the statute of limitations does not admit of an action being brought against him. A demurrer, therefore, presents a question of *law* which must be decided by a Judge; for questions of fact in actions at law are decided by a jury.<sup>4</sup>

The form of a demurrer (omitting the title and statement of venue) follows:

The defendant, Millard Dade, demurs to the complaint therein on the ground that it appears on the face of said complaint that the action was not commenced within the time limited by law, to wit, within the time allowed by Section 330.20 of the Statutes of Wisconsin for the year 1923.

If the Judge sustains the demurrer, the plaintiff must either abandon the suit or amend his declaration so that it constitutes an action at law. If the Judge overrules the demurrer, the defendant must either allow judgment to be taken against him or file an answer.

An answer, in common law pleading, must take either of two

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in 1832 after the system had been reformed to a great extent, the scene is laid in 1827 when conditions were worst.

<sup>3</sup> The following states in 1928 had retained the common law system of pleading: Alabama, Arkansas, Delaware, District of Columbia, Florida, Hawaii, Illinois, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, West Virginia.

<sup>4</sup> *Supra*, p. 75.



forms. It may be a general denial, called a *traverse*, as in a tort action when the defendant denies that he struck the plaintiff as alleged; or the defendant may enter a *plea in confession and avoidance*, that is, admit that he struck the plaintiff but allege that because he (the defendant) is a police officer he has a legal right to strike the plaintiff, who was resisting arrest.

If the defendant files a traverse, or denial of the plaintiff's allegation, an issue of fact has been discovered and the parties go to trial on that issue. Witnesses are called to testify, and finally the jury decides upon the issue of fact. But if the defendant pleads in confession and avoidance, no issue of fact has been discovered but an additional fact has been alleged. Therefore, the plaintiff must either abandon the suit or set up a denial of the fact alleged by the defendant, namely, that he is a police officer and that he struck the plaintiff while the latter was resisting arrest. If the plaintiff makes a denial—for instance, denies he was resisting arrest—his pleading is called a *replication*. Upon a replication—which provides an issue of fact—the parties go to trial, and witnesses are called to confirm or deny the fact that the defendant struck the plaintiff or that the defendant was resisting arrest.

It is apparent that by the common law system of pleading, the pleadings could be carried to a point of absurdity before the case ever came to trial, provided that the parties did not exhaust their facts. Formerly the various additional pleadings had special names, such as rejoinder, surrejoinder, rebutter, surrebutter, etc.<sup>5</sup> Fortunately, in states where the common law system of pleading is still used it has been considerably simplified.

**Equity Pleading.**—The system of pleading in equity cases is much the same as in cases at law. The *bill* in equity is only slightly different from the declaration (or complaint) in an action at law. The answer to a bill in equity may be either a traverse or a plea in confession and avoidance, and, of course, a bill in equity may be demurred to as in an action at law. In a few cases there is an element in a bill in equity that is never contained in a declaration in an action at law; it is the inclusion in the bill of an *interrogatory part*, that is, a series of questions

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<sup>5</sup> Cf. *Bulger v. Roche*, 11 Mass. (Pick.) 36.

which the adverse party must answer under oath. This interrogation of the adverse party is called *discovery*; it is discussed at length on page 140.

**Code Pleading.**—Code pleading is an attempt to simplify the common law system of pleading. By the passage of statutes, the various states have set forth the processes which pleading shall follow. In most states, the judicial code limits the number of pleadings to two and provides that whenever new facts are to be set up in defense by either party, the original pleadings shall be amended instead of requiring the filing of new pleadings, such as replications, etc. The judicial code in these states also allows for the joining of actions at law and actions in equity and for the joining of the various forms of action.\*

**A Complaint.**—In the code system of pleading the form of a complaint or of a bill in equity is about the same as in the old form. Below is an actual bill—it is called a *complaint* or a *petition* in most states which use the code system—which requests the issuance of an injunction.

STATE OF OHIO }  
HAMILTON COUNTY } SS

*In the Court of  
Common Pleas*

THE ELLIS LUMBER COMPANY }  
a corporation, }  
Plaintiff }  
vs. }  
W. C. BATES }  
Defendant }

No. 100000

### PETITION

Plaintiff is and was at all times hereinafter mentioned a corporation duly organized and existing under and by virtue of the laws of the State of Ohio.

Plaintiff says, that on or about the ninth day of April, 1925, it purchased from A. B. Williams all the timber on a certain tract of land on the West Point-River Falls Road that was eight inches in diameter and larger. The purchase of said timber and the right to manufacture and remove the same were evidenced by a written instrument, a true copy of which is marked "Exhibit A," attached hereto and incorporated herein by reference.

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\* Forms of action are discussed briefly on p. 117.

Plaintiff further says that the said A. B. Williams had a right to sell said timber; that A. B. Williams was the duly appointed and qualified and acting executor of the last will and testament of W. H. Williams, deceased, who had owned said tract of land and timber and he was empowered by the will of the said W. H. Williams, deceased, to sell said tract of land. Plaintiff has fully paid the entire purchase price for said timber, to-wit, the sum of Three Hundred Dollars (\$300.00) and it has fully performed all things on its part to be performed under said contract of April 9, 1925. Plaintiff has cut down and manufactured said timber into lumber at an expense of about Three Thousand Dollars (\$3,000.00).

Plaintiff says that practically all of the timber acquired by said contract has been cut down and manufactured into lumber, and that a large amount of the lumber manufactured on this farm, together with some other lumber, which is the property of the plaintiff, and which was cut from timber on an adjoining farm, is now located on said farm. Plaintiff does not know the exact value of this lumber but believes, and therefore alleges that the value of its lumber which is now on the farm owned by the defendants, is approximately Two Thousand Dollars (\$2,000.00). Plaintiff says that some time subsequent to April 9, 1925, the exact date of which is unknown to the plaintiff, the said A. B. Williams conveyed the farm on which said timber was located to the defendant, John Doe. Said defendant had full notice of plaintiff's rights in said timber.

Plaintiff says that before said farm was conveyed to the defendant that the said A. B. Williams, as executor and as the equitable owner of said farm orally agreed with the plaintiff, for a valuable consideration paid by the plaintiff, to extend the time for removing said lumber under said contract until October 9, 1926. The defendant had notice of said extension agreement and assented thereto. After the defendant had purchased said property, the defendant agreed to allow the plaintiff to have a reasonable length of time to remove said lumber, in consideration for which plaintiff agreed to and did leave certain trees standing that were sold to plaintiff under the contract of April 9, 1925. On or about the 18th day of December, 1926, the defendant, for a valuable consideration, agreed to allow plaintiff until July 1, 1927, to remove said lumber. In consideration of said agreement of the defendant, plaintiff gave to the defendant a certain part of the lumber and tree tops which were the property of the plaintiff. Plaintiff says that due to the lapse of time, it has now lost its right to cut down the trees that were left standing, and that the defendant has disposed of said tree tops which were given to him in accordance with said oral agreement for extension and that the actions and promises

of the defendant were done with the purpose of defrauding this plaintiff, and unless this court enjoins the defendant from interfering with said lumber or with the plaintiff in its removal thereof, a fraud will be perpetrated on this plaintiff.

Plaintiff says that it has fully performed all things required of it under said contract of April 9, 1925, and under said oral contracts for an extension of time. Plaintiff says that its entry upon said farm and its occupation of said farm and the cutting down and manufacturing of said timber into sawed lumber were done with the knowledge and consent of said defendant. The defendant permitted the plaintiff to enter said farm and cut and manufacture said timber under said contract at an expense of approximately Three Thousand Dollars (\$3,000.00) to the plaintiff, and the defendants have now forbidden the plaintiff to come upon said farm or to remove said manufactured lumber and the defendant is claiming that he owns said manufactured lumber because the period of one year mentioned in said original contract of April 9, 1925, has now expired. Said period of time had expired when plaintiff entered said farm and manufactured said lumber. While plaintiff was in possession of said farm and engaged in the manufacturing of said lumber it entered into negotiations with the defendant about various matters concerning the removal of the lumber and the route over which it should be removed and it was while plaintiff was in possession that the aforesaid oral agreements were made by the defendant in regard to the extension of time in which to remove said lumber.

Plaintiff says that relying upon its ability to remove said lumber, it has bound itself under contract to deliver quantities thereof to various customers; that said lumber is of a size and character especially required by plaintiff in its business and its contracts have been made in reliance upon the use of same; that said lumber is of a peculiar value to the plaintiff; that said lumber so manufactured by this plaintiff by reason of its continued exposure to the weather is deteriorating in value; that the plaintiff has no adequate remedy at law, and that unless the defendant is enjoined from interfering with the removal of said lumber, it will suffer irreparable injury far in excess of the value of said lumber and will become involved in litigation because of its failure to fulfill the contracts made in good faith with reference to said lumber.

WHEREFORE, plaintiff prays that during the pendency of this action, the defendant and his agents be enjoined and restrained from in any manner interfering with said lumber or with the plaintiff in its removal of said manufactured lumber located on said premises; and that upon final hearing said injunction may be

made permanent and for such other and further relief as equity and good conscience require.

JOHNSON & JOHNSON  
*Attorneys for Plaintiff*

STATE OF OHIO }  
HAMILTON COUNTY } SS

Thomas Morrison, being first duly sworn upon his oath, deposes and says that he is an officer, to wit, the president of the plaintiff, The Ellis Lumber Company; that said plaintiff is a corporation; that he has read the above and foregoing petition, knows the contents thereof and that the same are true.

THOMAS MORRISON

Sworn to before me and subscribed in my presence this second day of April, 1927.

JAMES M. HILL  
*Notary Public*

[SEAL]

An Answer.—In answer to the foregoing petition the defendant files an answer.<sup>1</sup>

STATE OF OHIO }  
HAMILTON COUNTY } SS

THE ELLIS LUMBER COMPANY }  
a corporation, }  
Plaintiff }  
vs. }  
W. C. BATES }  
Defendant }

*In the Court of  
Common Pleas  
No. 100000*

### ANSWER OF DEFENDANT

Now comes the defendant, W. C. Bates, and for his answer to the matters and things set forth in plaintiff's petition filed herein says that he admits that A. B. Williams signed said written instrument marked "Exhibit A."

Further answering and by way of defense, this answering defendant says that he denies that A. B. Williams was the owner

<sup>1</sup> In the last two paragraphs of the answer the defendant raises a question of law which is equivalent to a demurrer in common law pleading. Could he have included a demurrer in his answer if he had used the common law system of pleading?

of said tract of land, the timber located thereon and that he further denies that the said A. B. Williams had the right to sell said timber to the plaintiff.

Further answering, this defendant says that he denies that the plaintiff complied with all the terms and conditions of said contract marked "Exhibit A" within the time specified therein.

This answering defendant further denies that the said A. B. Williams ever orally agreed to extend the time limit provided for in said contract marked "Exhibit A." But if the Court should so find, the defendant says that said agreement is within the Statute of Frauds.

Further answering and by way of defense, defendant denies that he ever had any agreement with the plaintiff or that he agreed to sell the standing timber or agreed to allow the plaintiff to remove said lumber from said farm. But if the Court should so find, then defendant says that said agreement is within the Statute of Frauds.

Further answering and by way of defense, the defendant denies that he ever committed any actions or made any promises for the purpose of defrauding the plaintiff.

Further answering and by way of defense, this answering defendant denies each and every other allegation in said petition contained.

Further answering and by way of defense, this answering defendant alleges and says that if the statement of facts and allegations in plaintiff's petition contained constitute a cause of action of any nature whatsoever against him, that the same is a cause of action at law and not in equity and that the court is without power or authority to grant the relief prayed for against him in this case.

WHEREFORE, having fully answered, defendant prays that plaintiff's petition may be dismissed as to him and that he may recover his costs herein expended.

L. C. MURPHY  
*Attorney for Defendant*

STATE OF OHIO }  
COUNTY OF HAMILTON } SS

W. C. Bates, being first duly sworn according to law, says that he is defendant in the above entitled cause of action and that the facts stated in the above answer are true as he verily believes.

W. C. BATES

Sworn to before me and in my presence subscribed to this third day of May, 1927.

[SEAL]

WARREN WALLACE  
*Notary Public*

**Reporting Pleadings.**—In reporting suits which have just been filed, the reporter does not need to use his wits as much as he does in reporting the evidence in a criminal trial but he does have to be familiar with the kinds of suits filed, the parts of a bill, and legal terminology. He must quickly discover, for example, whether a suit is an action at law or an action in equity and whether a certain legal paper is a complaint, a demurrer, a traverse, or any of the other forms of pleading; unless he knows which kind of action and which kind of plea he is reporting he cannot understand the significance of the action or the plea. He should familiarize himself, also, with the parts of a pleading, being quick to select the essential facts, such as the amount of damages or other relief prayed for, the nature of the allegations, etc.

In copying portions of a pleading the reporter should be careful to spell correctly the names of the parties and to copy accurately the facts and figures that are mentioned. Libel suits have resulted from inaccuracy in merely copying a pleading. The following paragraph which appeared in the "Beg Pardon" column of a newspaper illustrates how easily mistakes may be made:

The name of the Atlas Building and Supply Company appeared under a list of petitions in bankruptcy in the Herald of March 1. This should have read "The Atlas Brush and Supply Company"; the Atlas Building and Supply Company, a concern having no connection with the above report, is not to be confused with the proceedings.

The reporter should be sufficiently familiar with the names of prominent persons in his city and county to recognize their names and occupations and their social position in the community. A New York City reporter, for example, who finds the name "George Herman Ruth" in a pleading filed in a Court Clerk's office ought to be well enough informed to recognize the real name of the famous baseball player. The reporter, moreover, should have a keen sense of news values in order to decide which parts of a document it is best to quote.

Elimination of legal phraseology from news stories is an

important principle for the reporter to observe in writing a news story based upon a pleading. How important is this principle is illustrated in the incident recited by George M. Cook, a public relations counsel for the Standard Oil Company of Indiana.<sup>8</sup>

The Department of Justice filed a suit against the Standard Oil Company of Indiana and fifty other companies and when the company that he represented filed an answer to the government complaint, Mr. Cook prepared a one thousand two hundred-word résumé, *free of legal phraseology*,<sup>9</sup> and sent it to the newspapers. As a result, all the press associations and virtually every paper in the country that received the press associations' service used the story. All the other companies filed answers at about the same time, but apparently nothing was printed about them. The presumption of Mr. Cook is, that the newspapers were not sufficiently interested in the pleading to dig the news facts out of the legal verbiage.

The reporter, also, should be careful to explain the legal significance of a pleading. If, for example, a party in an injunction suit pending in a local court petitions an appellate court for a writ of certiorari for a review of the case and asks that a supersedeas be issued to suspend further action by the adverse party, the reporter should make clear to his readers what is the effect of a writ of certiorari and of a supersedeas upon the pending action.<sup>10</sup>

An example of how the reporter prepares a news story based upon a complaint follows:

Miss Alice Rice, whose legs are both amputated above the knee, today accused Dr. Thomas Durocher, plastic surgeon, of having induced her to submit to his knife in a beautifying operation, and of having operated so unskillfully and so negligently that she had to sacrifice her legs to save her life.

The charges were made in a complaint against the surgeon, filed in the circuit court by the law firm of Brown, Smith & Rogers. Miss Rice asks for \$200,000 damages.

<sup>8</sup> Cited by S. Bent, *Ballyhoo*, pp. 147-148.

<sup>9</sup> Author's italics.

<sup>10</sup> See pp. 155 and 172 ff.



The pleading sets up that on Sept. 10 last, Miss Rice, who is 30 years old and resides at 1219 Mervale Avenue, went to Dr. Durocher for treatment of a scar on her left arm. The doctor told her, according to the complaint, that her legs were slightly "bowed" and that he could easily correct the condition.

"Succumbing to his advice, request, and urging," the document reads, "the plaintiff on the 14th day of January, 1928, paid to the said defendant the sum of \$800 as his fee for the purpose of performing the aforesaid operation on the tibias of her right and left legs.

"She further avers that the said defendant and his servants, agents, and employes then and there on Jan. 17, 1928, made a surgical incision, wound, and cut through the fleshy portions of her right and left legs, and with a circular saw cut through the tibias of her right and left legs, and that at no time did the defendant and his agents, servants, and employees in that behalf look at plaintiff's legs through a fluoroscope or take an X-ray picture of the tibias of plaintiff's right and left legs."

The pleading, continuing, tells of gangrene setting in after the bones were cut and set in plaster casts. Finally, her family doctor and another surgeon were called in and they amputated.

An example of how the reporter prepares a news story based upon a defendant's answer follows:

Although William Fleming killed his wife, Henrietta Martin Fleming, in order to obtain the proceeds of the \$10,000 life insurance policy held jointly by him and his wife, the policy is nevertheless valid and the proceeds should be paid to the estate of Mrs. Fleming, according to a pleading filed today in circuit court in answer to a complaint filed April 5 by the Marketman's Life Insurance Company.

The pleading was filed by the law firm of Brace and Bonnell on behalf of Courtland Cantwell, administrator for the estate of Mrs. Fleming. Henry and Roberta Fleming, children of the murdered woman and her husband, are the heirs of the estate.

The answer, in the form of a 15-

page document, reviews the circumstances surrounding the issuing of the policy on May 17, 1927, and denies that Fleming planned the murder prior to the time when the policy was applied for.

Fleming, who is serving a life term in the state penitentiary, is not making and does not intend to make any claim for the proceeds of the policy, the answer recites.

Denial that Fleming falsified as to his use of intoxicating liquors at the time he applied for the policy is vigorously made in answer to an allegation in the insurance company's complaint.

Fleming's payment of the first annual premium by means of a promissory note for \$312.80, of which \$160.30 was later redeemed in cash, is cited as evidence that the policy was in full force at the time of Mrs. Fleming's death.

It is necessary for the reporter for a morning paper to make two visits to the Clerk's office, once during the afternoon when he has plenty of time for reading and copying the pleadings, and again about five minutes before the office closes for the day. If the reporter omits the second visit, he may fail to learn of an important suit filed late in the afternoon, and an opposition paper may publish the story first. The same rule applies to calls made on Saturday morning, for all public buildings close at noon Saturday.

**Conditional Privilege.**—It sometimes happens that a plaintiff, in his declaration, makes statements about the defendant that are injurious to the defendant's reputation. If a newspaper publishes these statements, does it commit libel?

Generally, newspapers may publish with impunity fair accounts of judicial and legislative proceedings, notwithstanding the reports contain allegations that injure a person's reputation. Judicial and legislative proceedings are thus said to be *conditionally privileged*, the conditions referred to being the fairness of the report and the fact that it is published without malicious intent. The theory of conditional privilege, or *qualified privilege*, as it is sometimes called, is justified on the ground that "it is desirable that the trial of causes should take place under the public eye."<sup>11</sup>

<sup>11</sup> Justice O. W. Holmes in *Cowley v. Pulsifer*, 137 Mass. 392.

But what are judicial proceedings? Do judicial proceedings refer merely to the proceedings in open court, or do they refer to the papers filed by the parties at the beginning of a suit even though the suit never comes to trial? In most states judicial proceedings are said to begin only when the case reaches the attention of a Judge. That is to say, a newspaper cannot, with impunity, report the contents of a declaration or answer that contains libelous statements. This does not mean that the newspaper must always wait until the trial actually begins, for if a Judge, in his private office, should grant a motion on *ex parte* evidence (that is, where only one party is represented), a newspaper may report the contents of the papers filed in the case. Ordinarily, however, newspapers may publish the contents of the preliminary papers filed in a suit only at the peril of committing libel. The theory of this rule is that the publication of mere allegations in the preliminary papers throws no light upon the administration of justice. "It would be carrying privilege farther than we care to carry it, to say that, by the easy means of entitling and filing it in a case a sufficient foundation may be laid for scattering any libel broadcast with impunity."<sup>12</sup>

This common law rule regarding conditional privilege, usually referred to as the "Massachusetts rule," has almost universal acceptance. In Ohio, however, a statute superseding the common law rule, has been passed to enable newspapers to publish with impunity the content of preliminary papers.<sup>13</sup>

Recently, also, the New York Court of Appeals reversed the Massachusetts rule,<sup>14</sup> and held that the mere filing of a declaration and a summons initiated judicial proceedings.

A Mrs. N—— instituted a fraud action in a New York court alleging that a Mrs. C——, a Christian Science practitioner, induced her, through misrepresentation, to purchase \$10,000 worth of stock in a corporation and to loan her \$6,000. A summons and a complaint were served on Mrs. C—— and copies were filed in the office of the Court Clerk. A newspaper reporter read the summons and complaint on the day they were filed in the Court Clerk's office and

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ohio Gen. Code*, sec. 11343, sub-sec. 2.

<sup>14</sup> May 31, 1927. *Campbell v. N. Y. Eve. Post, Inc.*, 245 N. Y. 320, 157 N. E. 153.

wrote and published a news story which recited in detail the allegations which Mrs. N—— had made in the complaint. Afterward, however, Mrs. N—— decided that the allegations could not be sustained and the action was abandoned. Thereupon, Mrs. C——, who had been falsely charged with fraud in the complaint, filed a libel action against the newspaper, alleging that, although a newspaper is legally privileged to publish a fair account of a judicial proceeding, it is not privileged to print charges which are merely recited in a complaint. That is to say, the complaint which alleged fraud upon the part of Mrs. C—— did not actually constitute a judicial proceeding and therefore was not legally privileged. The newspaper filed an answer to Mrs. C——'s libel suit, affirming that a judicial proceeding actually begins with the filing of a summons and a complaint, regardless of whether or not the matter ever goes to trial. The New York Court of Appeals, the highest appellate court, sustained the contention of the newspaper.

Justice Pound, who wrote the decision, said: "An action is begun by the service of a summons, with or without a complaint. The summons is the mandate of the court and is subscribed, except whether the party appears in person, by an attorney or an officer of the court. A law suit, from beginning to end, is in the nature of a judicial proceeding. The service of a summons begins the suit. A newspaper may publish of A that B has begun an action against him by the service of a summons. No reticence is demanded on that score. It may go further and state that the complaint has been filed in the Court Clerk's office. To stop there, and hold that the newspaper states the contents at its peril, is to revive a rule of privacy in relation to litigants that no longer exists.

"Judicial proceedings in New York include, in common parlance, all the proceedings in the action. We may as well disregard the overwhelming weight of authority elsewhere and start a rule of our own, consistent with practical experience."

The newspaper reporter in a state where the Massachusetts common law rule has not been superseded by the New York rule or by statute should use care and discretion in reporting the preliminary stages of a lawsuit. The reporter should learn what has been the general attitude of the courts in his state as to following the Massachusetts rule.<sup>18</sup>

**Service.**—The order of the court which requires a defendant

<sup>18</sup> Extended discussion of conditional privilege is contained in W. G. Hale, *The Law of the Press*; S. A. Dawson, *Freedom of the Press*; W. R. Arthur and R. L. Crozman, *The Law of Newspapers*.

to answer to a suit brought against him is called a *summons*.<sup>10</sup> The summons issued by a state court is formally *served* upon the defendant by a Sheriff's Deputy, who, after he has served the summons, certifies a *return*. In divorce cases in which the whereabouts of the defending party is unknown, service is consummated by "publication," that is, the summons is published as an advertisement in a newspaper of general circulation.

The order of the court which requires a witness to attend and testify at a trial—criminal and civil—is called a *subpœna*. Failure to obey a subpœna legally served constitutes contempt of court. Many busy men, however, try to avoid being served with a subpœna as much as they avoid jury service. What precisely constitutes service is a more or less difficult legal question, but it is generally held that the subpœna must be given directly to the witness named in the subpœna, unless that person authorizes his attorney or some other person to accept service for him. Ordinarily, it is required that the official who serves the subpœna must tender the witness his fee and, in some instances, money to pay for his transportation. A federal law which was passed in 1925 provides a heavy fine for persons who refuse to obey subpœnas in criminal cases served upon them in foreign countries by United States consuls. When depositions are taken in foreign countries under the sanction of foreign courts the interrogations are called *letters rogatory*.

**The Trial.**—Some lawsuits are not really tried in the court room. The attorneys file *briefs*—that is, condensed arguments which include facts and citations of judicial precedent—and the Judge reads them, together with the pleadings, and reaches a decision which he formally announces in open court when the attorneys for both parties are present.

The newspaper reporter frequently has no way of learning about the determination of these cases except by referring to the records kept by the Clerk. If the Judge should give his decision in writing, the reporter of course can obtain a copy of it. If the case is of sufficient importance, the reporter can also obtain a copy of the briefs from the attorneys. The reporter who

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<sup>10</sup> Summons is also the name of the writ that notifies a person to report for jury service.

attends court on "motion day"—one day a week set aside by the Judge for attorneys to make motions on civil suits as the calendar is called—will frequently hear attorneys rise and announce that certain actions have been "settled out of court" and move for a dismissal. If the reporter is not present when this action is taken, he may obtain the information from the Clerk's records.

Trials of most lawsuits, however, proceed in about the same manner as a criminal trial. The attorneys make opening statements, witnesses testify for both the plaintiff and the defendant in about the same manner as in a criminal trial, the attorneys make closing arguments, and the Judge instructs the jury—if there is a jury. Juries are ordinarily used to determine the facts, but in many cases the parties elect to have the Judge determine the facts as well as the law. The jurors are selected, summoned, and impanelled according to the methods employed in criminal trials.

In formal civil trials more time is consumed with discussions concerning legal points than in criminal suits where the facts are usually most important. In civil trials a part of the testimony is also introduced in the form of depositions,<sup>17</sup> which are read into the record by the attorneys; depositions are the written testimony of absent witnesses made in response to a list of questions submitted in writing by attorneys and sworn to in the presence of a notary public or other authorized official of the court. Documents, also, enter more generally into the evidence than in criminal trials; in many civil cases witnesses are served with a *subpoena duces tecum*, a writ requiring the witness to attend the trial and to bring with him certain records or documents. The newspaper reporter must listen carefully to the evidence in a civil trial because it is frequently difficult even for the jury to follow. Checks, bonds, notes, contracts, and other papers are introduced as evidence and are traced by witnesses and attorneys through many stages.

For example, in the criminal trial in 1927 of a former United States Attorney General and a former Alien Property Custodian, Liberty bonds bearing serial numbers were alleged to have passed

<sup>17</sup> *Infra*, p. 141.

from person to person, to have been deposited in a distant bank, and finally to have been converted into cash. Because the bank's records dealing with the transactions had been destroyed, the government's case rested chiefly upon its ability to trace the Liberty bonds and connect the defendants with their ownership.

**Nonsuit.**—Some cases are decided before the final stage of a trial is reached. For example, the defendant, at the conclusion of the evidence introduced by the plaintiff, can move for a *nonsuit* or a *directed verdict*, or enter a *demurrer to the evidence*, and, if the motion is sustained by the Judge, the case comes to an end. The same motions may also be made at later stages in the trial, and one of them—the motion for a directed verdict—may be made by the plaintiff as well as the defendant. All three motions have the same effect: They admit the truth of the evidence introduced by the adverse party but deny that it is legally sufficient to constitute an action. If the Judge overrules the motion, the defendant must proceed to offer evidence, and the trial continues. The Judge sustains the motion only when it is plain that the evidence is legally insufficient to go to the jury. Examples of a directed verdict are given on pages 96 and 100; although they refer to a criminal case, they are applicable also in a civil trial.

**Damages.**—When a jury, after weighing the preponderance of the evidence according to the Judge's instructions, returns a verdict, it "finds for the plaintiff" or "finds for the defendant."<sup>11</sup> In an action at law the jury recommends the amount of damages to which one side or the other is entitled; usually, but not always, the amount represents a much smaller sum than the plaintiff prayed for in his declaration or the defendant prayed for in a counterclaim embodied in his answer.

Damages may be compensatory, punitive, or nominal. *Compensatory* damages are assessed in order to compensate the aggrieved party for his injury. *Punitive* damages, sometimes called *exemplary damages* or "*smart money*," are assessed to punish the defeated

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<sup>11</sup> A unanimous verdict is required in civil cases in all except the following states: Arizona, California, Colorado, Idaho, Kentucky, Louisiana, Montana, Minnesota, Missouri, Nevada, South Dakota, Utah, Washington, and Wyoming—J. B. Phillips, *Green Bag*, Vol. XVI, No. 8, p. 514.

party when he is proved to have been actuated by bad motives, as in some slander and libel cases. *Nominal* damages are those which are assessed merely to vindicate the technical invasion of the plaintiff's rights although no substantial injury resulted; for example, Henry Ford was awarded damages of one cent in a libel suit against the *Chicago Tribune*.

Damages are also classified as general and special. *General* damages are those which the law infers to have accrued from the wrong, and which, of course, do not have to be proved. *Special* damages are those which accrue because of the particular circumstances involved, as when a man loses his position as the result of slander; special damages have to be proved.

In many jurisdictions, juries in civil cases, as in criminal cases, may return a *special verdict*,<sup>19</sup> that is, a verdict by which the jury decides as to facts but leaves the application of the facts to the court.

After four and a half hours of deliberation, the jury returned a special verdict, answering two questions put to it by Judge John C. Knox.

The decision was that the contract signed between Jack Dempsey and Jack Kearns at Saratoga Springs in August, 1923, was a valid contract; but that the life of the contract was terminated in July, 1925, by mutual consent.

**Judgment.**—After hearing the verdict of the jury the Judge usually orders the Clerk to enter a judgment. He may, however, set aside the verdict.

In a tort action in which the defendant sued a municipality for an injury suffered while engaged in work on a street, the Judge instructed the jury to determine a special verdict, as follows: (a) whether the defendant was entitled to damages; and (b) whether the defendant's own negligence contributed to his injury. The Judge set the verdict aside because the jury found (a) that the defendant was entitled to damages; and (b) that he contributed to his own injury. Obviously, the defendant could not be entitled to damages if he was negligent in protecting himself.

Regardless of whether or not a verdict is set aside on the motion of the plaintiff and on the grounds that it is justified by

<sup>19</sup> See p. 109.



law, it is called a *judgment non obstante veredicto*; that is, a "judgment notwithstanding the verdict."

A woman sued a Sheriff's surety on his official bond, alleging that the Sheriff wrongfully levied an attachment upon her and caused her loss of money. The jury found for the defendant because the suit was brought more than five years after the wrong was committed and was therefore limited by the statutes applying to torts. The Judge, however, set the verdict aside on the plaintiff's motion for a *judgment non obstante veredicto* because it was shown by the plaintiff that the five-year limitation applied only to private citizens while a Sheriff's surety could be sued within the seven-year period which applied to the surety bond of officials.

**Declaratory Judgments.**—A new development in judicial procedure is what has come to be known as the declaratory judgment, a species of "advisory" opinion. Until statutes in some states authorized courts to render declaratory judgments, it was necessary for a cause of action to exist before the interested parties could know what were their legal rights. But under the declaratory judgment statutes, no cause of action need exist and the finding of the court is only a declaration of the rights and obligations of the parties; this is a matter of great convenience to business men who can proceed to carry out certain projects in the knowledge that they are proceeding within their rights and are not likely to be forced to suspend their efforts in order to protect their rights in a court.<sup>20</sup>

Former Representative Paul Woodruff will be wasting the time of voters and his own time if he insists upon having his name placed on the primary ballots, the Court of Appeals held today in an opinion authorized by the declaratory judgment law.

Former Representative Woodruff, who was sentenced last month to federal prison for a liquor law violation, has been disfranchised notwithstanding the pardon issued by President Harding after Woodruff began his prison term, the court held.

The declaratory judgment proceeding was begun by Roy T Harris, of Carroll-

<sup>20</sup> For a discussion, see H. H. Cooper, "Where the Law Fails," *American Mercury*, Vol. II, pp. 305-312.

ton, who has announced his candidacy from the 13th congressional district, the office held by Paul Woodruff prior to his conviction last March.
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**Decree.**—In equity suits the Judge determines the facts as well as the law. His decision is called a *decree*, and is comparable to a judgment in an action at law. A decree does not award damages but commands or forbids the performance of an act. Disobedience of a court decree constitutes civil contempt and is punishable by fine.

Decrees are usually *final*, but some are *interlocutory*. The interlocutory decree becomes final only after certain further proceedings have been disposed of, as for example, an interlocutory decree in a divorce suit does not become final until after one of the parties has been separated from his first spouse for a certain period of time. A *decree nisi*, that is, a decree "unless," is a provisional decree which will be made final on motion unless the party against whom the decree is directed "shows cause" why it should not be made final. For example, a woman who sued her absent husband for a divorce was granted a decree nisi, it being presumed that unless he appeared within a reasonable time to show cause why the decree should not be granted that it would be made final on motion of the plaintiff.

Comparable to a judgment by default in an action at law is a *decree pro confesso* in equity; it is a decree entered in favor of the plaintiff after the defendant has made no answer to the bill. A *consent decree*, like a consent judgment, is one entered by consent of the parties and is not so much a judicial decree as a mutual agreement made by the parties under the sanction of the court. It is frequently issued in antitrust cases in which an offending corporation, charged with numerous violations of the antitrust acts, agrees to refrain from further violation of the law, and the government consents not to prosecute the pending cases so long as the corporation abides by its agreement.

**Execution.**—The carrying into effect of a judicial decree, judgment, or sentence is called the *execution*. In criminal offenses it implies imprisonment, the assessing of a fine, or putting the convicted defendant to death.<sup>21</sup> The judgment of a court in a civil case is executed by levying damages; fre-

<sup>21</sup> It is a vulgar error to speak of the "execution" of a convicted criminal. It is the sentence of the court which is "executed"; the criminal is put to death.—Black's *Law Dictionary*.

quently it is necessary for the court, in order to effect the execution, to issue a process of attachment upon the property of the defeated party, that is, to seize the property. The recent development of selling by the installment plan has caused wide use to be made of the *judgment note*, a paper which binds the maker to accept judgment against him without recourse to legal proceedings.

**Master's Hearings.**—In some litigations all of the evidence is not presented in the presence of a trial Judge. Obviously, one Judge cannot read and digest all the briefs and pleadings submitted to him or hear all the evidence in all the cases which come to his court. Therefore, a sort of assistant Judge, called a *Master* or *Referee*, is appointed to hear evidence in the preliminary stages of some long and involved cases, especially cases which require much accounting of monies. For example, in many courts of equity there is an official called a *Standing Master in Chancery*, and in connection with some cases a *Special Master* is appointed to hear the evidence; in bankruptcy proceedings in the federal courts nearly all the litigation is determined by the *Referee in Bankruptcy* subject to review by the District Judge who appoints him.

The duties of the Master are to hear and read the evidence just as the Judge would do and to make a report or recommendation to the Judge. It was a Master, for example, who, in 1927, heard all the evidence in the involved case in which the state of Illinois sued Governor Len Small to recover more than \$600,000 interest due the state, who examined all the accounts placed in evidence, and made a report to the Judge of the Circuit Court. In the celebrated Lake Michigan water diversion suit, to which several states were parties, the Supreme Court of the United States appointed Charles Evans Hughes as Special Master to hear all the evidence; the proceedings extended over several months, and in a single brief the Master was asked to decide 106 separate findings of fact and 32 separate conclusions of law.

**Discovery.**—Comparable to the Master, in some respects, is the *Court Commissioner*. In some jurisdictions the Judge of the court of original jurisdiction appoints a number of attorneys as Court Commissioners, one of their duties being to conduct *discovery hearings*, sometimes called *adverse hearings*.

Discovery is a process used by one party to a suit to obtain from the adverse party evidence or documents connected with the case which are in the exclusive knowledge or possession of the adverse party. Formerly, discovery could be had by a party only by the filing of a separate bill in equity which contained the questions he desired the adverse party to answer.<sup>22</sup> In recent years, however, statutes have been passed which authorize one party to a suit to obtain discovery by merely summoning the adverse party to a hearing in the presence of a Court Commissioner. There the parties, in the presence of their attorneys, submit to interrogation, and the evidence is made part of the record of the suit even before the suit comes to trial.

Believed to be an attempt to determine the names of persons who participated in the riot at the Memorial Union Building Friday night, and afterward to cause their arrest and arraignment in criminal court, a suit today was filed in circuit court against the Brotherhood of Union Carpenters and the Madison Building Trades Mechanics' Alliance by Frank Kilgore, a strike-breaker employed in the construction of the building and one of the men manhandled during the riot.

Under the discovery statute, Kilgore has received a court order demanding the appearance of six local carpenters before Court Commissioner Timothy Brown next Tuesday at 2 p.m.

At that time Kilgore wants to ask these union men the following questions:

1. What men participated in the riot at the Memorial Union Building Friday night?

2. What preliminary plans were laid for the manhandling of the strike-breakers and the destruction of their bunk-house?

3. Did the rioters have any orders regarding the affair from the officers of the local unions?

It is believed that this suit is a cleverly laid plan on the part of the contractor and his attorney to learn the names of the persons who participated in the riot and to cause their arrest on warrants charging assault and battery and malicious destruction of property.

<sup>22</sup> *Supra*, p. 121.

Newspaper reporters seldom attend discovery hearings unless they involve a suit of great importance. The following news story is an example of a discovery hearing:

An adverse examination of O. G. Murdock and Frederic Noon, of Randolph, was held yesterday afternoon in the office of B. B. Burton, Warren county court commissioner, preliminary to the hearing in circuit court of the case in which the Western Tobacco Growers' Coöperative association is suing for damages for breach of contract by two of its members.

The defendants raise tobacco on a partnership basis. They delivered their crops to the pool in 1922 and 1923, but failed to deliver the 1924 and 1925 crops, selling them instead to independent buyers. Testimony at the hearing brought out the fact that the Robbins & Owen company bought the 1924 crop and the Imperial Tobacco company the 1925 crop.

Asked why he didn't deliver the 1924 crop to the coöperative association, as he agreed in his contract signed in 1922, Murdock declared that he was not satisfied with the grading given his crop by the pool. He asserted that he asked for a regrading but was denied it.

**Depositions.**—In jurisdictions in which the Judge appoints court commissioners these officers have another function than the holding of discovery hearings, namely, the taking of depositions. When the testimony of absent witnesses is desired one party may secure a commission from the court to obtain the written testimony of the absent witness under the sanction of a distant court. The attorney for the party wishing the deposition writes out a series of questions which the witness answers in writing in the presence of the Court Commissioner or other authorized persons. A method of taking depositions more frequently used, however, is *oral interrogatory*; that is, attorneys for both parties go to the absent witness, examine him in the presence of a Notary Public, and submit the transcript of the testimony at the trial in lieu of requiring the witness to attend.

to harass a defendant by repeatedly suing him on the same allegations.

The \$67,000 damage suit of Roger B. Burke and his son, Roger, Jr., against Carroll Willoughby, Chicago manufacturer, which grew out of an automobile collision last summer, in which Burke's wife and two nieces were killed, was called in circuit court this morning.

Originally, each of the Burkes filed a suit against Willoughby, but the suits were later consolidated. Willoughby, in an answer to the Burkes' complaint, filed several weeks ago, denied responsibility for the accident and set up a counter-claim of \$10,000.

Sometimes suits grow out of other suits. They are called *ancillary* actions, and most frequently result when a victorious party has to sue a defeated party a second time to enforce judgment in the main action, or when a party to an action at law which involves property has to sue in equity to prevent the adverse party from transferring the property.

In some actions between two parties, a third party who has an interest in the action asks to be made a plaintiff or a defendant. The action is called an *intervening* action.

The Chesapeake & Ohio, the Norfolk and Western, and the Louisville and Nashville railroads, in their answers to the coal operators' suit, stated their willingness to put into effect the reduced rates if the court approved.

Intervening petitions joining the operators were filed by consumers of the northwest territory and West Virginia, and intervening petitions as defendants were presented in behalf of the operators of the Cambridge, Ohio, field and the Pittsburg district.

Frequently, a defendant in a suit not only contests the suit started against him, but files a *cross-suit*. The complaint of the defendant in the original suit is referred to as the *cross-complaint* and the plaintiff in the original suit is called, in the cross-suit, a *cross-defendant*. Even though an original action is dismissed the cross-action may still be maintained. The most frequent cross-actions are those which concern divorce.

In some damage suits the defendant not only contests the suit but files a *counterclaim*. The amount of the counterclaims, if found valid, may be deducted from the damages awarded the plaintiff.

In some equity jurisdictions and in some appellate jurisdictions the party who answers a complaint in an equity action is called the *respondent*. When more than one person is made a defendant one of them is called the *co-respondent*; the latter term, however, is usually reserved to designate a third party in divorce actions.

Some cases begun in a state court but not finished are afterward transferred to a federal court; the process of transfer is called *removal*. When cases that are begun and are finally determined in a state court are later taken to a federal appellate court the transfer does not constitute removal in a strict sense, but appeal.

**Divorce Proceedings.**—A public demand for legislation to prohibit newspapers from reporting divorce proceedings has arisen for which there is considerable justification. Sensational newspapers have printed salacious details of divorce cases that are offensive to public taste. In response to the public demand, the state legislature of Delaware, in 1927, passed a statute providing for all hearings and trials of divorce cases before the court privately in chambers except when the judgment of the court should dictate that the hearings and trials in any case may be public. The parliament of Great Britain, in 1926, passed an act which reads as follows:

It shall not be lawful to print or publish, or cause or procure to be printed or published,

(a) in relation to any judicial proceedings any indecent matter or indecent medical, surgical, or physiological details being matter or details the publication of which would be calculated to injure public morals;

(b) in relation to any judicial proceedings for dissolution of marriage, for nullity of marriage, or for judicial separation, or for restitution of conjugal rights, any particulars other than the following, that is to say:

i. the names, addresses and occupations of the parties and witnesses;

ii. a concise statement of the charges, defenses, and counter-charges in support of which evidence has been given;

iii. submission on any point of law arising in the course of proceedings, and the decision of the court thereon;

iv. the summing up of the judge and the finding of the jury (if any) and the judgment of the court and observations made by the judge in giving judgment:

Provided that nothing in this part of this subsection shall be held to permit the publication of anything contrary to the provisions of paragraph (a) of this subsection.

[And providing also for imprisonment, fine, and limitation to "proprietor, editor, master printer or publisher."]

Such legislation ought not to be necessary in the United States provided the newspapers do not offend public taste and morals. Fortunately, only a few sensational papers in metropolitan communities are offensive. In some instances the publication of divorce proceedings serves the public interest, as when publicity is given in cases in which excessive alimony is allowed and cases which involve new points of law. The following are examples:

## (1)

A ruling that would invalidate marriages performed on the high seas was requested of Superior Judge S— yesterday. The judge took the case under advisement, but indicated he *might* refuse the request in order to avoid nullifying thousands of nuptials.

The request was made to the court by D— M—, who is seeking to annul his marriage on July 1, 1926, to Miss W— E—.

The ceremony was performed by Capt. G— F—, master of the S.S. R— on the high seas between Southampton, England, and Cherbourg, France.

## (2)

Judge H— L— ruled yesterday in what was considered a test case to determine whether a man's rights are equal to those of a woman in regard to alimony. He decided that the statutes make no provision to compel a woman of means to support an estranged husband who is unable to maintain himself.

The decision was on a petition of W— B— who sought temporary alimony from Mrs. R— B—, on the



grounds he is suffering from tuberculosis and unable to work, whereas she is an able bodied woman and regularly employed.

The passage of legislation which censors newspapers in any manner can be viewed only with alarm. Only as a final measure for curbing the practice of publishing salacious matter can such legislation be justified. But there is reason to believe that other states will in the future imitate the Delaware legislature and the British parliament, if certain newspapers in particular communities continue their policy as regards the publication of salacious details of divorce proceedings.<sup>23</sup> In view, however, of the assertions of judges and sociologists that prohibition of publication of divorce proceedings results everywhere in a large increase in the number of divorces, it is probably not desirable that newspapers, voluntarily, should suppress publication of the granting of divorce decrees or the filing of divorce suits.

**Relations with Officials.**—Because a reporter for a metropolitan newspaper has to report the proceedings of several courts simultaneously and because he cannot always know whether a civil trial will be sufficiently interesting to warrant his attendance, he must rely upon the advance information furnished him by court officials and attorneys and upon statements given him by these persons during a trial and at its conclusion. In most of the civil actions reported by newspapers the news that an action has been started and that it has terminated with a particular result are the only facts that are interesting. The news reporter, therefore, writes much of his copy about suits which have been filed and suits that have been decided; that is, he reports pleadings as they are filed and judgments as they are rendered just as much as he reports the evidence presented in important trials. He does not have time to report the evidence in any except the important or the unusually interesting cases. For that reason

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<sup>23</sup> In several recent instances unconscionable women who married for money have, through their attorneys, made use of the newspapers in their schemes for extorting excessive alimony from their husbands. By threatening her husband with court room publicity of his private home life, a woman is plainly relying upon the newspaper's usual policy of reporting the details of divorce proceedings. No respectable newspaper is willing to be made a tool of shyster lawyers and the species of modern woman called "gold digger."

he should make friends of the clerks and other court officials and attorneys. The Judge of an important court, however, is not usually willing to talk to reporters about cases and is seldom a source of news. But the reporter, by being polite and considerate and by showing intelligence, can gain the good will and respect of the officers of the court who record the main facts about pending cases.

Some court clerks do not file all the orders made by the court in a place as accessible to reporters as the place where the pleadings are filed. This is particularly true during a recess of the court. Reporters therefore must work out an arrangement whereby the Clerk will inform them immediately whenever an order to show cause or a temporary injunction is issued by a Judge "in chambers." The same arrangement ought to be made for learning about a mandate or an opinion from an appellate court located in another city that comes down to the local court. Copies of opinions and mandates are always sent to the Clerk of the local court by mail. Local attorneys also may be relied upon to furnish copies of opinions from the appellate court in cases in which they appeared before the appellate court.

**Relations with Attorneys.**—Interviews with attorneys are nearly always necessary in important cases which involve fine points of law. The attorneys are usually willing to explain legal points to reporters and to advise them in advance about certain evidence, provided the reporter shows sufficient understanding of legal terms and processes. The information furnished by attorneys is frequently indispensable when the reporter is seeking to learn what the result of certain motions or pleas is likely to be. In talking with attorneys, however, reporters should guard against being misinformed or being misled by the attorneys' *ex parte* statements; some suits are really started in the courts with the expectation of their being tried in the newspapers to the advantage of one of the parties. Young attorneys are usually the most obliging and are willing to help newspaper reporters, for they seek publicity and expect the reporter to mention their names from time to time. Because the reporter will frequently use the names of attorneys in news stories he should early learn the correct initials and the proper spelling

of the attorneys' names. He should, also, become personally acquainted with as many attorneys as possible. Scores of attorneys practice in the numerous courts in a big city; in Chicago, for example, there is one attorney to every two thousand persons living in the city. The reporter, also, should be quick to learn which are the leaders and specialists. Some attorneys specialize in bankruptcy practice, some in federal court practice, some in litigation which concerns the handling of trust funds, and some in other branches. The reporter who observes the specialties of the various attorneys can profit by seeking out the specialists to answer his questions.

In important and complicated litigation the reporter ought to form the habit of consulting the statutes and the decisions of courts rather than accepting an offhand opinion from an attorney. Failure to do this caused a New York reporter to misinform his readers during the litigation over the subway fares in May, 1928. The Interborough Rapid Transit Company had announced an increased fare and had sought an order from the federal court to restrain the city from bringing suits in the state courts for the purpose of staying the increase. A newspaper reporter, after interviewing counsel for the city, wrote a news story in which he asserted that the city, by proceeding under a particular section of the federal judicial code, could file a suit in the state court to determine the right of the company to put the increase into effect and that such a suit would automatically halt the proceedings brought by the company in the federal court to restrain the city from interfering with its plan of increasing fares. Had the reporter read the section of the judicial code, he would have noted that the proposed suit, if filed by the city in the state courts, would not automatically act to stay the proceedings brought by the company in the federal court, but that it would stay the proceedings in the federal court only if the city waived its rights for the company to put its new schedule into effect temporarily. In other words, the proposed suit would permit the company to put its new schedule into effect immediately, and would not prevent it from continuing the schedule permanently unless the suit should finally be decided in favor of the city. A careful reading of the section would have prevented the publication of a news story which said that the city is weighing a "new plea to bar the 7-cent fare" and that "the mayor's advisors plan a move . . . which would stay the I. R. T.'s action."

**Advance Stories.**—In the long interval between the filing of a suit or the indictment of a defendant the public forgets about

the action unless, perchance, subsequent papers are filed in the suit or unless some interesting event occurs which is related to the litigation. Immediately preceding the opening of a new term of court, therefore, the reporter should prepare an advance news story which lists the cases coming up for trial. By referring to the trial docket prepared by the Clerk he may list the criminal, law, and equity cases that are on the calendar, and briefly review the most interesting and important ones. The reporter can frequently serve the public interest by commenting in his general advance story upon the fact that the criminal docket is larger or smaller than usual. Prior to some trials, reporters interview the attorneys on each side and receive enough information to write an advance story which sometimes forecasts the nature of the defense.

## EXERCISES

1. Prepare a news story based upon the pleadings on pages 122-126.
2. List all the reasons you can think of that justify publication of the following news story:

Mrs. N—— K——, church worker and society woman of W——, has been wooed from her home by J—— D——, until recently a village motorcycle policeman, it is alleged in a \$50,000 alienation of affections suit filed against him yesterday by her husband, G—— K——. Mr. K——, whose income is listed at \$48,000 a year, also filed a supplemental bill for divorce, naming the former policeman as co-respondent.

3. List all the reasons you can think of that justify the suppression of the foregoing news story.
4. Explain how it is possible for a bill in equity to demand damages, as reported in the following news story:

Boston, Mass., May 8 (AP).—A bill in equity, charging the Boston Publishing company with deliberate infringement of its copyright in its premature publication of the reply of Gov. Alfred E. Smith to Charles C. Marshall, was filed in federal court yesterday by the Atlantic Monthly Publishing company. . . . The Atlantic Monthly company seeks damages which, under the language of the bill, may exceed \$400,000

5. Distinguish between tort and crime. Can an act of an individual constitute both a tort and a crime?

## CHAPTER VI

### APPELLATE PROCEDURE AND EXTRAORDINARY REMEDIES

THE verdict of a jury in a civil or criminal case is not always followed by a judgment and an execution of the judgment. The defeated party may make an effort to secure a judicial review of the case and, in some criminal cases, may try to obtain executive pardon or clemency. Most civil cases, however, end with the judgment of the lower court because the amount of money involved does not justify the defeated party in expending an additional sum to carry the case to a higher court. The important civil cases and many criminal cases are carried further in the courts. Ordinarily, it requires about a year to try a case in a trial court and obtain a review of it in an appellate court, but in some cases several years elapse before the judgment of a court is finally executed. For example, more than six years elapsed between the time a Massachusetts court found Nicolai Sacco and Bartolomeo Vanzetti guilty and their death in the electric chair. The following chronology of the well-known case shows how the defense resorted to nearly every legal device in order to nullify the verdict of the jury in the trial court:

April 15, 1920—Frederick Parmenter and Alesandra Beradelli were killed in a payroll holdup at South Braintree, Mass.

May 5, 1920—Sacco and Vanzetti were arrested as suspects in connection with the Braintree crime.

September 14, 1920—They were indicted for murder.

May 21, 1921—They were placed on trial before a jury in Judge Webster Thayer's court at Dedham, Mass.

July 14, 1921—A verdict was returned finding Sacco and Vanzetti guilty of murder in the first degree. Defense motions for a new trial were subsequently denied by Judge Thayer.

May 12, 1926—The Supreme Judicial Court of Massachusetts overruled exceptions to Judge Thayer's conduct of the Dedham trial and his denial of motions for a new trial.

October 23, 1926—A motion for a new trial on the ground of newly discovered evidence was denied by Judge Thayer.

April 4, 1927—The Supreme Judicial Court of Massachusetts overruled exceptions to Judge Thayer's denial of a new trial which had been asked on the ground of newly discovered evidence.

April 9, 1927—Sentence of death was passed upon Sacco and Vanzetti by Judge Thayer. Execution was set for August 10.

August 9, 1927—Governor Fuller of Massachusetts reprieved Sacco and Vanzetti until August 23.

August 22, 1927—Three United States Supreme Court Justices successively denied petitions of the condemned men for a stay of sentence pending a hearing on a petition for a writ of certiorari.

August 22, 1927—The Supreme Judicial Court of Massachusetts denied a petition for a writ of error.

**Motion for a New Trial.**—A defeated party does not ask an appellate court to review his case until he has exhausted the remedies available in the trial court. He can, for example, always move for a new trial, and the motion will be sustained if the Judge is convinced that material error entered into the trial or that newly discovered evidence warrants a new trial. When a defeated party wishes to move for a new trial his attorney gives notice of his intention immediately after the jury has returned the verdict. The Judge, then, defers the sentence or judgment for five or six days—seldom for longer than the duration of the term of court—and sets a day to hear argument on the motion. In the meantime the defeated party files with the court a formal motion which contains an *assignment of errors* alleged to have entered into the proceedings, and furnishes a copy of the motion to the adverse party. On the day set the opposing counsel present their arguments which are based upon the defeated party's assignment of errors. The Judge takes the matter under consideration, and either immediately, or within a few days rules on the motion. If he overrules the motion, sentence or judgment is entered accordingly. If he sustains the motion—that is, if a new trial is granted—the case is placed on the trial docket. At the second trial it is presumed that the same errors will not reoccur.

The grounds for a new trial are numerous. They usually concern either some irregularity which occurred during the trial

or newly discovered evidence. The most common irregularities cited are these: misconduct of the jury; lack of jurisdiction by the court; the Judge's error in instructing the jury or in allowing the introduction of incompetent evidence; excessive damages allowed; and influencing or packing the jury by the adverse party.

The Judge who tries the case—not a higher court—rules on the motion for a new trial. If the defeated party is dissatisfied with the trial Judge's ruling he may appeal the entire case, alleging as one of the errors that the Judge erred in not granting a new trial.

## (1)

Eleven reasons are given why Edwin Kiernan should have a new trial, in an assignment of errors filed in circuit court today by Attorney Albert Scott. Kiernan was convicted last week on a charge of murdering Miss Eleanor Fairchild.

Among the reasons cited are that improper instructions were given the jury, that improper evidence was introduced, and that defense counsel was restricted in the examination of state witnesses.

The motion for a new trial will be argued by Attorney Scott and Assistant Prosecutor Stanley Goodwin Monday.

## (2)

Hollis Francke was advanced one step nearer the penitentiary yesterday in the long battle of the state to incarcerate him for his attack on Miriam Fries, 14 year old school girl. Judge Proctor Conwell, after hearing extensive arguments by defense attorneys, refused a motion for a new trial. Francke was convicted by a jury about a month ago.

A motion in arrest of judgment was then allowed to be entered and continued until Thursday to give the defense one more opportunity to produce the missing school girl's parents, who disappeared last week after making affidavits for defense attorneys, denying the truth of the original testimony.

If the motion in arrest of judgment is denied Thursday, then Francke has only the Supreme Court left to save him from a ten year sentence.

Attorney Virgil Patridge, well-known

criminal lawyer, appeared yesterday to argue the motion on behalf of Francke. He said his client was a victim of prejudice because of his past connections.

Assistant State's Attorney Floyd Hanson opposed the defense motion and called attention to the peculiar disappearance of his witnesses.

(3)

Judge Conwell then denied the motion in arrest of judgment and passed sentence. He gave Francke a ninety day stay of mittimus, however, for the purpose of allowing him to prepare a bill of exceptions for a writ of error to the Supreme Court. He also increased his bond to \$15,000.

There are instances in which the victorious party has filed a *confession of error*, admitting that the defense is entitled to a new trial on the ground of error, but this is an infrequent occurrence. Ordinarily, a confession of error is filed in connection with a criminal case and presumes that the Prosecuting Attorney is not only an attorney for the state but is a public officer interested in the fair administration of justice.

**Appeal and Error.**—Originally, an action at law was reviewed by *writ of error* and a suit in equity by *appeal*. On a review by writ of error, the correctness of the rulings of the Judge was considered; for example, his rulings in sustaining or overruling objections to evidence, in charging the jury, and in various other matters which were purely questions of law. The action of the jury on the facts was not reviewed. In the case of an appeal, however, the appellate court reviewed not only the law, but the facts. The fundamental reason for this distinction was that there was no jury in a suit in equity, and the judges of the appellate court had the right to reexamine the facts as found by the Judge of the lower court.

In more than half of the states today—the states which have adopted the code system of pleading—the distinction between an action at law and a suit in equity has been abolished, and, consequently, there is no distinction between review by writ of error and by appeal, the review being commonly by appeal. Even in such states, however, the review of cases tried before



a jury tends to approximate, in its scope, the review that was formerly had on a writ of error, and the review of cases in which no jury was required tends to approximate, in its scope, the review by appeal.

In the federal courts, although the distinction between an action at law and a suit in equity is still maintained, Congress has recently provided that writs of error need no longer be used but that all cases may be reviewed by taking an appeal. This, however, will not make any difference in the actual scope of the review; for the federal appellate courts will continue to review actions at law under the same principles that they used on a writ of error, even though the review be called an appeal.

The distinction between review by writ of error and by appeal, where it still exists, is more than a mere matter of form. The main distinction is in the scope of the review, that is, whether the appellate court reviews a judgment that was based upon the verdict of a jury, or reviews a decree that was entered in a case tried by the Judge alone. In this chapter the term "appeal" will be used to denote both methods of review irrespective of the form of review.

**The Pleadings.**—The pleadings filed in a reviewing court when a case is appealed are in the form of a *brief*. The brief cites the points upon which the appeal is based, and discusses them. A transcript of the record of the case in the lower court, which includes the assignment of errors submitted in reference to the motion for a new trial, is also sent up from the lower court. In appellate proceedings, the defeated party is usually referred to as the *appellant* and the adverse party as the *appellee* or the *respondent*; if the case is to be reviewed by a writ of error, the defeated party is referred to as the *plaintiff in error* and the adverse party as the *defendant in error*.<sup>1</sup>

Contained in the brief is written argument to inform the court as to the points upon which the appeal is taken. The brief

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<sup>1</sup> This nomenclature is followed in the federal courts and by many state courts, but some state appellate courts preserve the same title for an appealed case as it bore when in the lower court, the plaintiff in the lower court, for example, being referred to as the plaintiff in the appellate court.

Because the review of a case involves a considerable expense the appellant is required to post bond to guarantee the costs of the case; the bond is called *appeal bond*.

Whenever both parties are dissatisfied with the judgment in the lower court they may both appeal, both appeals being called *cross-appeals*. For example, there were cross-appeals in 1926 of the Wrigley Chewing Gum Company and the Larson Chewing Gum Company in which the latter, having been awarded damages of \$1,384,000, thought the damages too small, and the former thought the damages too large.

**The Record.**—One of the largest items of expense in a trial is the cost of making the record and a transcript of the record. The lower courts in some states provide licensed court reporters who, on the request of one or both parties, take stenographic notes of the testimony and the argument and prepare one or more transcripts, the parties paying a stipulated sum. The court reporters will also furnish newspapers with a transcript of part or all of the record. The record of the trial includes not only the questions of the attorneys and the answers of the witnesses but the objections, exceptions, and arguments of attorneys and the rulings and remarks of the Judge. Whenever an attorney objects to a question put by the adverse attorney and the Judge overrules the objecting attorney, the latter may take an exception to the ruling. If, later, the case is appealed, the trial Judge certifies the record and it is sent to the reviewing court, and the various exceptions in the record frequently furnish the grounds for an appeal.

**The Hearing.**—The procedure in the various state appellate courts differs to such an extent that only the procedure in one state—Wisconsin—will be described. The briefs and the record in a case are filed with the Clerk of the appellate court who prepares a printed "calendar." (Most appellate courts have a fall and winter calendar in which from two to three hundred cases are listed.) The Clerk takes about forty cases from the calendar and places them in order on an "assignment." He then notifies the attorneys as to when their cases will be called for argument. In some instances, attorneys do not find it necessary to appear

before the court to supplement their briefs with oral argument, but they frequently do. While hearing oral argument the justices—usually about seven—sit together. Some of them make copious notes during the argument and some of them ask questions of the attorneys.<sup>2</sup> Five or six days are required to hear the argument in all of the assigned cases. After the court has concluded the hearing on the assignment it adjourns for about three weeks to consider the cases.

**Considering the Case.**—The justices retire to their separate chambers and devote independent consideration to the cases, each reaching a conclusion as to the appropriate decision which should be made in each case. Then they go into consultation, taking up each case in order and agreeing upon a decision in each case. Whenever they disagree, a ballot is taken and the majority vote determines the decision.

After agreeing upon decisions the justices retire again to their offices to write *opinions*; an opinion is that part of a decision which states the court's reasons for making the decision. The preparation of the opinions falls to the justices in the successive order of cases. (In some courts, however, the Chief Justice assigns certain justices to prepare certain opinions.) If, as sometimes happens, the Justice to whom the preparation of a certain opinion falls, disagrees with the decision of the other justices, he exchanges cases with another Justice. Usually when there is disagreement, more than one opinion is prepared for the case; in addition to the *majority* opinion, one or more *dissenting* opinions are prepared by justices who disagree with the majority decision. Although ordinarily one Justice writes an opinion for the whole bench, any Justice may prepare a *concurring* opinion in which he reaches the same conclusion as the other justices but arrives at it by a different method of reasoning. Each Justice who prepares an opinion concerning a decision in which there is unanimous agreement furnishes a copy to each of the other justices who read it prior to a second consultation. At the second consultation the justices go over the various opinions and make the necessary corrections and changes. About a month elapses from the time the justices hear the argument

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<sup>2</sup> Cf. J. F. Essary, *Covering Washington*, Chap. IV.

on the assignment of about forty cases until they are ready to render their decisions.<sup>3</sup>

**Reporting the Decision.**—On a regularly assigned day—usually a certain day of the month, such as the first Monday—the decisions are announced and the opinions are made public. Secrecy surrounds all the conduct of the justices prior to the announcement of the decision; there are almost no instances of “leaks” in appellate courts.

To write a news story from an opinion in a short time is a difficult task unless the reporter has previously acquainted himself with the issues involved in a case. Although the decisions are formally made from the bench, it is the Clerk of the appellate court who furnishes copies of opinions to newspaper reporters. The Clerk is the official with whom the reporter conducts almost all his interviews because the justices, of course, refrain from discussing cases. The Clerk of an appellate court is an important state official; in some states he is a constitutional officer like the Governor, the State Treasurer, and the Attorney General. He is a licensed attorney and is assisted by a number of persons who are likewise trained in the law. The newspaper reporter keeps in touch with the Clerk to learn of the cases as they are filed and obtains from him information as to the dates assigned for the argument of certain cases. On the day that decisions are handed down the reporter obtains a list of the decisions and a copy of the opinions in the important cases.

The reporter can know whether or not a case is important only after he has given it some study. Since the title of a case is the only information that appears on the calendar it is seldom a clue to its nature, and the reporter, consequently, must rely upon the Clerk to tell him about the issues involved in certain cases. By knowing these, and by following the oral argument and by reading the briefs, the reporter learns enough about a case to write a news story from the opinion after it has been handed down. Some opinions are very long and the steps in reasoning are difficult for a reporter to follow when he is pressed for time. Some cases are so important that they must be digested

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<sup>3</sup> This is the procedure in just one state appellate court. The procedure is different in other states and in the federal appellate courts.

quickly and published immediately. Since some judicial decisions are the biggest news of the day, affecting the stock market and public affairs to an extraordinary extent, the news stories must be prepared both speedily and accurately.

Opinions in important decisions are reported extensively enough to make clear to the reader *why* the court decided in such and such a way. Some decisions are also reported at considerable length because of the effect they are expected to have upon public affairs or business. The opinions themselves do not always indicate the effect they will have, and it is therefore necessary that the reporter know beforehand the degree of importance which attaches to the impending decision.

## (1)

The government was victorious today in the second skirmish of the "battle of the billions," so called *because billions of dollars of railroad valuation depend upon the outcome. . . .* The decision affects every railroad in the United States and its valuation for rate-making purposes

## (2)

In a far reaching, unanimous decision today the United States supreme court *dealt a fatal blow to several varieties of lawless enforcement of the national prohibition law.*

Justice Brandeis delivered the opinion in a case relating to the arrest by New York state troopers of two men near the Canadian border and the seizure of liquor in their automobiles without a search warrant or other authority of the federal government to assist in enforcement of the Volstead act.

The decision holds that the Volstead act does not impose on state authorities the obligation to make arrests and seizures in connection with the illegal transportation of liquor. The national prohibition act imposes the duty on federal officers only.

Under this construction of the statute, *the activities not only of state officers acting independently without express federal sanction, but of committees of private citizens to enforce the Volstead act are outlawed as invasions of the rights of citizens guaranteed by the constitution*

*In states having no state enforcement*

*law the decision leaves the federal government the sole enforcer of the Volstead act. Such states are New York, Maryland, Montana, and Nevada.*

(3)

*The Virginia state law providing for the sterilization of mental defectives was upheld today by the United States Supreme Court in an opinion deemed of much importance because of the agitation for similar legislation in other states.*

The reporter, however, must guard against *misinterpreting* the effect of a decision. Sometimes reporters and headline writers jump at conclusions with the result that the public is misinformed. For example, a decision of the United States Supreme Court, handed down April 30, 1923,<sup>4</sup> declared that under the Eighteenth Amendment, it is unlawful for government agents to seize intoxicating liquors on domestic merchant ships outside the territorial waters of the United States. An important press association reported the decision in the following words:

*The immediate effect of the Supreme Court's decision is to legalize all rum traffic on the high seas, including the wet fleet that hovers off the Atlantic Coast, and for the time being upsets the plan of the government for suppressing the smugglers*

Over this statement copyreaders placed such headlines as "Rum Fleet is Legalized" and "Decision Upsets President's Plans to Use the Navy to Drive Smugglers from Coast." The report sent out by the press association was approximately true—except that the court did not actually "legalize" rum traffic; but it was just misleading enough to cause headline writers to make it even more misleading.

The reporter not only explains why important decisions are important, but includes the process of reasoning by which the court arrived at its decision, relates a sufficient history of the

<sup>4</sup> *Cunard S.S. Co., Ltd., et al. v. Mellon*, Secretary of the Treasury, 262 U. S. 100.

case to explain how it came before the appellate court, and, sometimes, quotes from the dissenting opinion as well as from the majority opinion.

<i>Reasoning</i>	... which ruled that <i>the principle sustaining compulsory vaccination is broad enough to justify sterilization.</i>
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<i>History</i>	The decision was rendered in the case of Carrie Buck, 18, a feeble-minded woman and the mother of a feeble-minded child. . . . A circuit court had ordered the performing of a salpingectomy upon the patient, whose friends contested the order on the ground that the statute denies incompetent persons equal protection of the laws.
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Oftentimes the reporter, in order to interpret an opinion adequately, must write into his news story considerable information gained from previous interviews and from study.

<i>Effect</i>	An "inner circle of practical men" in the Republican party cost forty-nine Louisville and nine Jefferson county elective officials and an undetermined number of appointees their jobs.
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<i>The decision</i>	The Court of Appeals, in an opinion handed down today in the Democratic election contest, ruled that "no election" had been held in Louisville and Jefferson county in November, 1925. Fraud and conspiracy, the court held, made the proceedings gone through with at the polls invalid.
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<i>Effective</i>	The mandate of the court, ousting the officers, will be issued in ten days without prejudice to the filing of a petition for a rehearing within thirty days.
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<i>Effect</i>	Successors to the ousted officials will be appointed by Governor W J Fields. If he follows a precedent he established two years ago, when the Republican councilmen and aldermen were ousted by the Court of Appeals, he will appoint the Democratic candidates in the 1925 election. These officials, headed by Joseph T. O'Neal, as mayor, will serve until their successors are elected in a special election in November.
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	Among the city officials affected were Mayor Arthur A. Will, Police Judge E. M. Dailey, Miss Margaret Boyd, audi-
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tor, and Mrs. E. E. Bristow, treasurer. The county officials affected were County Judge Henry I. Fox, J. Matt Chilton, county attorney, and Aubrey Cossar, sheriff.

No election was held, the court said in its opinion, because of evidence of hiring and paying impostors to cast illegal votes, acts of violation and intimidation, and the carrying out, in part at least, of a scheme "concerted by an inner circle of 'practical' men in the Republican organization to get into the ballot boxes a sufficient number of false Republican ballots to insure the seating of the Republican candidates no matter what might be the result of the ballots lawfully cast."

*Reasoning*

There was no evidence, the court added, that the candidates or the Republican campaign committee, or any of them had any knowledge of the deed.

The court reviewed at length the evidence of 1,683 witnesses who testified when the case was before the chancellors of Jefferson county, and reversed the opinion of the chancellors, who had held that while the Republicans admitted 500 illegal votes were cast, that was not enough to change the result.

*Obiter dictum*

In declaring that the corrupt and corrupting politician by his practices is "unleashing a power which may pull to death and destroy all that upholds our heritage of freedom," the court said that it is the duty of the voters to see that fair elections are held.

A few decisions, unimportant in their effect, are yet sufficiently interesting, because of their style or manner of comment, to warrant quotation at length. For example, in a more or less unimportant opinion, a Justice may include an interesting *obiter dictum* ("said in passing"), that is, a part of the opinion which is incidental or collateral and which does not bear directly upon a point necessarily involved in the particular case.

(1)

"... It is a sad commentary upon present day politics that candidates and political parties must pay for almost every character of service rendered in elections. Political and patriotic impulses seem no longer sufficiently potent to impel many voters to discharge their duties as citizens."



## (2)

In scathing language Judge Walter Owen, of the Supreme Court, in an opinion handed down this morning, denounced those representatives of the clergy who use their positions to influence death bed wills, . . .

Judge Owen denounced the method by which the Rev. Mr. B—— succeeded in having the testator bequeath \$40,000 to the hospital.

"It is blasphemy to say that such results promote the work of God," said the opinion. "It is sickening to think of such results flowing from the work of spiritual ministers. There is something ghoulish about this whole proceeding."

"If such undertakings meet with the approval of those who minister to the spiritual welfare, it is time that mere temporal sensibilities protest."

**The Mandate.**—Comparable to the execution which follows a judgment in a local court is the *mandate* of the appellate court. The mandate, which is directed, after the case has been reviewed, to the court in which the case originated, commands that a certain disposition be made of the appealed case. The appellate court either *affirms* or *reverses* the judgment of the lower court. Some cases which are reversed are merely dismissed, but others are remanded for a new trial. The mandate is sent by mail to the Clerk of the lower court. Sometimes it is not sent for thirty to forty days after the reviewing court's decision. In some state courts the mandate is called a *remittur*.

Only newspaper reporters stationed in the state capitals, in the national capital, and in the sixteen cities in which sits the United States Circuit Court of Appeals\* report decisions of appellate courts. Yet reporters in all cities frequently have occasion to obtain opinions by mail when they concern local persons or affairs and when they are not reported adequately by the press association and special correspondents. These opinions are sent to the Clerk of the local court in which the case originated and to the attorneys for the parties.

**Pardon and Parole.**—After a defendant has been convicted of a crime and sentenced to imprisonment the Judge of the

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\* For list see footnote p. 37.

court signs a *mittimus*, which directs the warden or the jailer to receive the prisoner. The fate of the prisoner is henceforth in the hands of the executive, instead of the judicial branch of the government, except that the prisoner may appeal his case while in prison. Unless the executive branch of the government intervenes, the prisoner must remain in prison until he has served his sentence. In most states a prisoner who has served one-third of his sentence is eligible to *parole* and is ordinarily granted parole if his behavior in prison has been good. Parole is the freeing of a prisoner upon his word (*parol*) to observe good behavior during the remainder of the time for which his sentence runs; if he fails to observe good behavior, he is returned to prison to complete his sentence. Parole is similar to *probation*, which is practiced by the courts prior to the commitment of a convicted person, in that both the person on parole and the person on probation must report periodically to a designated officer, in one case, an officer of the parole board, and in the other case, a probation officer attached to the court in which he was sentenced. Investigations by criminologists show that in nearly all cases parole is a desirable method of reforming criminals, but in states in which dishonest politics influences the action of parole boards many criminals who are "sprung" from prison by politicians continue their criminal actions.

In addition to parole, pardon may always be sought by a convicted person. In most states the Governor issues all pardons, but in some states the discretion is almost entirely given to a Board of Pardons. The Governor may not only pardon a convicted person but he may remit a portion or all of a fine. Pardons are either *absolute* or *conditional*; a conditional pardon may be revoked by the subsequent act of the convicted person. A person convicted of a capital offense and sentenced to death may receive either a pardon or a *commutation* from the executive. A commutation reduces the death sentence to life imprisonment. The Governor may *reprieve* a person sentenced to death, that is, stay the execution pending an application for judicial review.

## EXTRAORDINARY LEGAL REMEDIES

**Public Law.**—Up to this point, the discussion has almost exclusively concerned the ordinary remedies whereby citizens secure themselves in their rights in their social and business relations. Almost no mention has been made of those branches of public law which concern the relation of the government to its citizens and the interrelation of the different parts of government. These two branches of public law are called *constitutional law* and *administrative law*. Neither of them can be discussed in the limited scope of this book, but there are certain extraordinary legal remedies which find a use in public law that can be discussed briefly. These extraordinary legal remedies, which have a use in private as well as in public law, serve the citizen and governmental officials in emergencies when the ordinary remedies do not suffice. Some of them may be invoked in the ordinary trial courts (*nisi prius*) and some in the appellate courts. Some of the writs are, in fact, forms of appellate procedure.

The six extraordinary remedies are: habeas corpus, injunction, mandamus, prohibition, certiorari, and quo warranto.\*

**Injunction.**—Although most of the extraordinary remedies are invoked almost exclusively in matters of public law, two, especially, are also made use of in private litigation. Habeas corpus, the great remedy for protecting persons in their constitutional rights, is discussed in Chapter III; injunction, the remedy for protecting persons in their property rights, is discussed in this section, although properly it might be discussed as a part of equity procedure.

The chief use of injunctions in private matters is to conserve property rights; for example, to enjoin a nuisance, to enjoin waste, to enjoin trespass and interference, and to protect copyrights and patents from infringement; it has been used, also, to restrain labor leaders from inducing men to join a union, and to prevent joint stock companies from declaring a dividend. Its

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\*The distinctions between the various remedies are so fine that a thorough discussion cannot be given here, standard textbooks are Wood, *Legal Remedies*, and High, *Legal Remedies*

use in public matters is extensive; for example, it has been used to enjoin officials from promulgating a law enacted by the legislature, to enjoin officials from spending certain monies in the public treasury, and to enjoin an insurance company from increasing its rates.

Ordinarily, the writ of injunction is negative in that it invokes the law to preserve the status quo, but in some instances it is positive and mandatory for the same reason. For example, a person may obtain an injunction to compel another to remove a nuisance or to tear down a fence that was constructed on the complainant's property; such a writ is called a *mandatory injunction*.

A petition asking a mandatory injunction to compel directors of the Goodyear Tire and Rubber company to pay \$16,000,000 in unpaid back dividends, and asking that a \$60,000,000 first mortgage bond issue now in distribution be held up until the dividends have been paid was filed in common pleas court today by Kent P. Johnson, Akron, holder of 57 shares of common stock.

Injunctions are *temporary* and *permanent*, sometimes called *preliminary* and *perpetual*.<sup>7</sup> The chief distinction between temporary and permanent injunctions is that the former is issued for a short period of time and usually upon the *ex parte* representations of the complainant that an anticipated act of the defendant will cause him immediate and irreparable damage. A permanent injunction, which is never issued until after the defendant has had opportunity to reply in a formal trial, extends until further order of the court. The usual procedure is for the complainant to apply to a Judge for both a temporary and a permanent injunction. If the Judge believes, upon the *ex parte* statement of the complainant, that immediate and irreparable damage will ensue to him, he issues a temporary injunction or a temporary restraining order without hearing the defendant; temporary injunctions do not ordinarily extend for more than a fortnight. The Judge requires of the complainant that he

<sup>7</sup> Sometimes a writ called a *temporary restraining order* is issued which has the same effect as a temporary injunction.

execute a bond sufficient to pay the costs and possible damages that might result to the defendant should it later be determined that the complainant had no just cause for enjoining the defendant. At the same time the Judge sets a date for a hearing to determine whether the temporary injunction shall be made permanent or shall be dissolved.

At this hearing, the complaint is heard "on the merits," that is, both sides are represented and the controversy is examined thoroughly. If the defendant convinces the Judge that a permanent injunction should not issue, the court dissolves the temporary injunction and assesses the costs (and sometimes special damages) against the complainant; otherwise, he grants a permanent injunction.

A temporary injunction restraining Allen Gregory, managing editor of the Daily News, from printing advertisements of local clothing dealers condemning the sale of suits here under a coupon plan, was dissolved today by Judge Arthur Malecke in circuit court.

The plaintiff, the Elliott Woolen Company, a Chicago firm, obtained the injunction from Bernard Joplin, court commissioner, following the publication of an advertisement April 26.

Judge Malecke dissolved the injunction on the ground that the organization of the Daily News is such that Gregory has no control over the advertising columns.

Where the controversy is so complex that a great deal of time or a recess of the court is required, the Judge *extends* the temporary injunction for another brief period.

Not all temporary injunctions, however, are issued upon *ex parte* representations. Frequently a temporary injunction is requested when it is presumed that (a) a permanent injunction will not be necessary; or (b) when the suit for a permanent injunction would require a long time. In either instance, a hearing is held on the application for a temporary injunction, both parties being represented.

When a temporary injunction is made permanent it stands for an indefinite time unless the defendant afterward, on application to the court, has it *dissolved* or *modified*.

Supreme Court Justice Ford modified in two respects yesterday the temporary injunction he issued on Thursday against the Consolidated Stock Exchange.

In the original order Justice Ford required members to deliver securities in case of outright purchasers within 24 hours of their purchase. He amended this to give the brokers 48 hours in case of deliveries within the city, 72 hours in the state, and 96 hours outside the state.

An injunction which has been dissolved may also be *reinstated* on the application of the complainant. Disobedience of an injunction constitutes civil contempt.

The form of a permanent injunction, omitting the title and statement of venue, is as follows:

Whereas, said plaintiff, Elwood Pittenger, has filed his verified complaint in this court and has moved upon the said complaint and the affidavits of George Hall and James Kelly for a writ of injunction enjoining you the said defendant from

1. Preventing or attempting to prevent any person or persons by threat, intimidation, force or violence from entering into or continuing in the said complainant's service;

2. From using abusive epithets or physical violence to or toward any of the employees of complainant, or to or toward any persons proposing to enter the employment of complainant;

And it appearing to the satisfaction of the court from the said complainant and the said affidavits in support thereof that sufficient grounds exist therefor, and the proper bond having been given and approved;

Now, therefore, you the said defendants are strictly commanded that until the further order of this court, you and all persons acting under the control, authority, or direction of you, do absolutely refrain and desist from [paragraphs 2 and 3 repeated];

And this injunction you will observe under penalty of the law.

Because a temporary injunction may be issued by a Judge in chambers and even while he is on vacation, newspaper reporters must keep in close touch with the Clerk of the court with whom all orders of the court are filed.

Numerous protests are made about what has come to be called "government by injunction." Labor leaders protest that frequent resort to injunction by employers is essentially an abridgment of

the employes' constitutional rights. Alleged violators of the National Prohibition Law, too, complain of the alleged unfair use of "padlock," a form of injunction which closes up alleged breweries and saloons without providing the defendants with a trial by jury. Undoubtedly, in certain instances unfair use has been made of the writ of injunction and there is plainly a tendency of the judiciary in some communities to assume more than its traditional authority. Although each case of alleged unfairness must be judged upon its merits, the resort to injunction for the purpose of depriving a citizen of his right to trial by jury is ordinarily to be condemned.

**Mandamus.**—Mandamus ("we command") is a writ that compels action. It is issued by a court on application of a party who has a personal interest or of a party acting in the public interest. It is chiefly directed to administrative officials who perform ministerial duties, but may issue against any board, corporation, or inferior court. It commands the performance of an act which the law requires that body or person to perform because of his office or trust. The writ of mandamus has been issued for example, to compel a Board of Health to grant a license to a chiropractor, to compel a City Council to provide a court room for a Justice of the Peace, to compel a water company to fix water rates, to compel a Secretary of State to issue a certificate of election to one entitled to it, to compel a City Council to issue a license for the exhibition of a motion picture film, to compel a Secretary of State to place the name of a candidate upon election ballots, to compel a railroad to resume and continue operation, and to compel a corporation to open its books to inspection by a stockholder.

Applications for a writ of mandamus are frequently dismissed because the applicants are ignorant of the restrictions placed upon the issuance of the writ. Some of the restrictions are these: (a) A writ of mandamus will not issue when there is any other adequate remedy. (b) A writ of mandamus cannot compel the performance of a duty arising out of contract; for example, a writ of mandamus lies against a school board to compel the reinstatement of a suspended pupil, but it does not lie against a teacher who is only an employe under contract to the board. (c) A writ of mandamus can compel a public officer or board to act, but it cannot affect the discretion or judgment of

the officer or board; for example, it can compel a board to levy taxes, but it cannot fix the tax rate.

The usual procedure in applying for a writ of mandamus is to ask first for an *alternative* writ which orders the officer or board either to perform a duty or to show cause why the duty should not be performed. Disobedience of an alternative writ, or failure by the respondent to show cause why it should not issue is followed by the issuance of a *peremptory* writ, disobedience of which constitutes civil contempt.

A news story which describes the issuance of an alternative writ of mandamus follows:

(1)

An alternative writ of mandamus was issued by Circuit Judge Hoppmann late yesterday against John W. Meeks, state superintendent of public property, ordering him to sanction immediately the purchase of an addressing machine for Secretary of State Fred Zimmerman, at a cost of \$42,123, or to appear in circuit court next Monday to show cause why he should not authorize purchase of the device.

The writ was issued after Mr. Zimmerman late yesterday filed a petition in circuit court.

Several months ago Mr. Zimmerman purchased the addressing machine for the auto license bureau of his office. Six thousand dollars was paid to the company which manufactures the machine. Mr. Meeks, however, refused to sanction the purchase and, accordingly, Solomon Levitan, state treasurer, refused to complete the payment.

It is not known whether Mr. Meeks will authorize payment for the device or whether he will go into court to defend his attitude in the matter.

(2)

The supreme court today issued a writ of mandamus to the county court and county judge of Vernon county, directing that Frank Kadlec be permitted to withdraw a plea of guilty on a charge of manslaughter in connection with the death of Roger Zoellner.

Attorneys appearing in behalf of Kadlec



told the supreme court that Kadlec was "railroaded" into pleading guilty and was sentenced without knowledge of his counsel.

The writ of mandamus directs the court to set aside the judgment convicting him.

## (3)

... The Williams brothers asked the supreme court to issue a writ of mandamus to compel Judge Hiram Thompson to sign a bill of exceptions.

**Prohibition.**—A writ of prohibition is the counterpart of a writ of mandamus in so far as it applies to judicial bodies. Whereas a writ of mandamus *compels* action, a writ of prohibition *forbids the continuance* of action. It is addressed only to courts or to bodies of a judicial character, not to administrative officials as in the case of mandamus, and is issued by a court of superior jurisdiction. It is similar to an injunction addressed to a court in so far as the prohibition of further action is concerned except that it is addressed *directly to the court*, whereas an injunction is addressed *to the litigants* on one side of the case.

The chief use of the writ of prohibition is to prevent inferior courts from exceeding their jurisdiction. It has been issued to stop prosecution in certain cases; for example, to prevent the prosecution of a case in the state courts in order that the defendant could remove the case to the federal courts. It has been issued to nullify certain other writs issued by inferior courts, for example, to prohibit a lower court from enforcing a judgment, and to nullify restraining orders issued by a lower court. It has been issued, also, to prevent a disqualified Judge from acting in a case and to prevent a Justice of the Peace from punishing for contempt of the District Court.

## (1)

A writ of prohibition restraining further interference by the Forest County circuit court with the organization of the county board of Forest county was authorized by the supreme court today.

Circuit Judge W. B. Quinlan's temporary restraining order preventing the

Forest county board from holding a special meeting to elect a chairman is lifted by this action of the high court.

## (2)

In refusing to issue a writ of prohibition to prevent Circuit Judge Chester A. Fowler from trying the cases of the Art Wall Paper Company against some thirty fire insurance companies, the supreme court held today that service on the Wisconsin insurance commission in any action against an insurance company licensed to do business in Wisconsin is equivalent to service on the company.

The decision was handed down in the case of the State ex rel. *Ætna Fire Insurance Company v. Chester A. Fowler*, judge of the circuit court of Fond du Lac county.

The Art Wall Paper Company, an Illinois concern, which suffered a fire loss against which it had insurance protection of \$80,000, started an action for the collection of the loss by beginning garnishment proceedings against agents of the company in Wisconsin who had premium funds of the company in their possession.

Attempt was made to prevent trial of the suits on the ground that a foreign corporation could not take advantage of the Wisconsin statute for obtaining service on an insurance company through service on the state insurance commissioner.

**Certiorari.**—A writ of prohibition only prevents an inferior judicial tribunal from *further* exceeding its authority; it does not correct a final judgment of a tribunal which has *already* exceeded its authority. In order to correct such irregularities after final judgment, a defeated party resorts to the writ of certiorari ("to be certified"). The writ is applied for in a superior court and, when issued, directs the lower court to send up the record in the case—"certified"—in order that the higher court may correct the imperfections in the record.

Originally, the only errors corrected were those arising from the fact of the lower court exceeding its jurisdiction. But statutes in many states now authorize the writ of certiorari to issue in cases in which neither a writ of error nor an appeal are

adequate remedies, regardless of whether or not the court exceeded its jurisdiction. Therefore, many cases finally decided by appellate courts come to them on writs of certiorari as well as on appeals and writs of error. Ordinarily, however, a writ of certiorari does not correct mere irregularities and errors, but only errors arising from the fact of the court exceeding its jurisdiction. It is frequently resorted to where questions of great importance are involved and upon which an early and authoritative decision is needed from the appellate court. For example, a federal District Judge issued a temporary restraining order enjoining a defendant from opening a chain of stores for a period of fourteen days; he afterward extended the order for ten days and again for eleven days; the defendant thereupon applied to the United States Circuit Court of Appeals for a writ of certiorari in order to test the authority of the federal District Judge in continually extending the duration of a temporary restraining order.

The form of a writ of certiorari, omitting the title and statement of venue, follows:

To Lewis Malin, Esquire, Judge of the Thirteenth Circuit Court, County of Rowan,

Greetings:

Whereas, upon the petition of the plaintiff, herein verified by the certificate of Arthur Fleming, Esquire, an attorney of this court, it manifestly appears to us that you, exercising judicial functions in a certain action, have made a certain order (described) to the injury of a substantial right of the plaintiff and that there is no appeal or other plain, speedy, and adequate remedy, and being therefore willing to be certified of the said proceedings:

We, therefore, command you that you certify and send to the Supreme Court on the 13th day of June, 1927, annexed to this writ, a transcript of the record of the proceedings aforesaid with all things touching the same as fully and as entirely as it remains before you by whatsoever names the parties may be called therein that the same may be reviewed by our said court, and that our said court may further cause to be done thereupon what it may appear of right ought to be done, and in the meantime, we command and require the said Lewis Malin, to desist from further proceedings in the matter so to be reviewed.

Appellate courts exercise more discretion in issuing writs of certiorari than in allowing appeals and writs of error. In most courts of appellate jurisdiction in which a bench of judges sits, it is required that the judges act upon the petition for a writ of certiorari *en banc*; a single Judge cannot issue it, as is possible in allowing a writ of error or an appeal. Appellate courts are extremely cautious about issuing writs of certiorari. The United States Supreme Court, for example, granted, in 1925, only 100 petitions and denied 428.\*

After a writ of certiorari has been issued to require the lower court to certify and send up the record of a case, the appellate court is under no obligation to decide the issue in favor of the petitioning party. When a court consents to review a case on a writ of certiorari, it merely consents to review it; it does not consent thereby to rule in favor of the party who petitioned for the writ.

When the court, on the other hand, refuses to issue a writ in a case, it does not necessarily have to express an opinion about the case. Ordinarily, it merely denies the writ. Some reporters, who do not understand this practice, have presumed that when an appellate court refuses to review a case on a writ of certiorari it thereby decides in favor of the adverse party. For example, on October 16, 1927, the United States Supreme Court refused to review a case involving the padlocking of certain Chicago cafés, but some Chicago newspapers spoke of the Supreme Court "sanctioning" the procedure of closing cafés by means of the padlock, and asserted that the Supreme Court "sustained" the prohibition officials. The Supreme Court, in this instance, did not comment upon the matter, but merely refused to consider it.

In some instances, however, the refusal of an appellate court to review a case on a writ of certiorari actually has a positive effect, and, in a sense, lends approval to certain actions contemplated by an action at law, even though it does not say so.

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\* F. Frankfurter and J. M. Landis, *The Business of the Supreme Court*, p. 295.

The supreme court today refused to review the reorganization of the Chicago, Milwaukee, and St. Paul railroad, in an order denying a writ of certiorari sought by the group of bondholders opposed to the reorganization plan. . . .

The receivers of the railroad urged the supreme court to refuse to review the case, asserting that every day's delay cost the property \$2,000 in interest alone, declaring that the reorganization should take place at once, and insisting that as long as reorganization was delayed the security holders would be deprived of any return on their investment. They said that only eight per cent of the bondholders opposed reorganization.

After a writ of certiorari has been issued by a high court and the lower court has certified the record, the procedure in the appellate court thenceforth is the same as if the case had been brought to the higher court on appeal or error. In finally deciding a case brought to it on a writ of certiorari, an appellate court discharges the writ, returns the record to the lower court, and directs the lower court as to how to proceed in the final disposition of the case.

In returning the records to the court of Magistrate Lyle Kolar, Judge Donald Norris discharged the writ of certiorari in the case of the State ex rel. Charles Glass v. Magistrate Kolar. The case had been reviewed on a writ of certiorari after Glass had charged lack of jurisdiction.

A judgment of \$52.45 was rendered against Charles Glass in favor of Harold Hackney several months ago by Magistrate Kolar and the writ of certiorari was issued to test his jurisdiction in the case. The decision confirms the procedure in the case, and the judgment will stand.

**Quo Warranto.**—Although the writ of mandamus is issued against administrative officials to compel them to perform a duty which the law sanctions, such a writ cannot be used to try their title to office. In order to go behind the face of election returns to determine whether a certain person is entitled to the office he holds, it is necessary that a court issue a writ of quo warranto. The writ inquires "by what warrant" he holds the

office. The writ is also issued to inquire by what authority a corporation exercises a franchise; it thus contests either the granting or the misuse and non-use of the franchise. The writ has thus been used to oust officials, to prevent private corporations from conducting a type of business not authorized by their charters, to prevent foreign corporations from doing business within a state, and to enforce forfeiture of a corporate franchise.

The writ is not a civil writ in the sense that it can be used by one person in a suit against another person. It is ordinarily applied for by a prosecuting officer in the form of an "information" and issues as a matter of course. But when a private party wishes to have it issued he must apply for it in the name of the state, with himself as "relator." That is to say, it is applied for in the name and on behalf of the state but on the information, or "relation," of an individual who has a private interest in the matter. Such cases are styled "The State *ex rel.* John Doe *v.* Richard Roe." The abbreviation "ex rel." stands for *ex relatione* ("on the relation"). When a private party desires to have a writ of quo warranto issued he must first prove his interest in the action. For example, the application of a defeated candidate for office in a three-cornered election was denied on the ground that, regardless of whether or not his successful opponent was ineligible, the petitioner did not receive enough votes to be elected even though the votes of the successful candidate were not counted. Ordinarily, however, in attempts to oust municipal officers, it is generally held that any citizen has sufficient interest to entitle him to bring an action.

... The court ruled that a taxpayer such as Miller had no direct interest in the governorship that would give him standing in court on such a matter.

"His interest is not a direct interest, but is only an interest in the official acts which the incumbent of the office may do," the opinion recited.

The petitioner was prepared for this ruling, however, and, since he believes that the legal issue has not been met, is asking a client who has a direct and pecuniary interest in the individual acts of the governor to bring a suit.

When a private citizen wishes to bring an action against an office holder or a corporation he must first sue out the writ, that is, bring an action to prove to the court *that he is entitled to bring the action* in the name and on behalf of the state. If he is successful, the writ issues. Then a second action follows, in which it must be shown *that the incumbent officeholder is not entitled to his office or the corporation is not entitled to its franchise*.

## (1)

Claims that the corrupt practices act was violated in the fifth ward aldermanic election is the basis of a *petition* for a writ of quo warranto to issue in a suit brought in circuit court today to contest the election of Ald. Julius Holman. The defeated candidate, Waldo Kenyon, is the petitioner. The successful candidate has twenty days in which to file an answer.

## (2)

Charges that voters who were not residents of the fifth ward were permitted to vote and that challenged votes were not properly marked by election officials formed the basis of a quo warranto suit in circuit court today brought by Waldo Kenyon to contest the election of Ald. Julius Holman. Mr. Kenyon's attorneys aver that he received 777 legal votes and that Ald. Holman received only 752 legal votes.

Summary.—It would be well for the student at this point to ask himself certain questions to test his ability to distinguish between the various extraordinary remedies. What is the difference between injunction and mandamus? Between mandamus and prohibition? Are both issued against the same kinds of parties? What is the difference between injunction and prohibition? Between mandamus and quo warranto? Between certiorari and prohibition? Between a writ of certiorari and a writ of error?

## EXERCISES

1. Prepare news stories based upon the following decisions:
  - (a) *Gitlow v. The People of New York*, 268 U. S. 652.
  - (b) *McGram v. Daugherty*, 299 Fed. 620.
  - (c) *McGram v. Daugherty*, 273 U. S. 135.
  - (d) *Cunard S. S. Co., Ltd., et al. v. Mellon, Secretary of the Treasury*, 262 U. S. 100.
2. Prepare a news story based upon the decision in *Abrams v. United States*, 250 U. S. 616. In connection, read Z. Chafee, *Freedom of Speech*, pp. 187-188.
3. When an appellate court reviews by writ of error a criminal case that was determined by the Judge directing the jury to return a verdict of "not guilty," would it be reexamining facts, or only the law; that is, would it be reviewing the action of the Judge or the action of the jury?
4. Answer the same question as to a case in which the Judge set aside the verdict of the jury because it was against the evidence.
5. Prepare the order for a temporary injunction granted by a federal Judge in your district, restraining the publication of an issue of the college daily paper. Use your imagination for supplying facts, and make use of Winslow's *Forms of Pleading and Practice*, Forms Nos. 396 and 424, or any other standard volume of forms of pleading and practice; e.g., Abbott's *Principles and Forms of Practice*.
6. Using the same set of forms, prepare a writ of mandamus. (Winslow, Nos. 3129 and 3130.)
7. Using the same set of forms, prepare a writ of certiorari. (Winslow, No. 3106.)



## CHAPTER VII

### BANKRUPTCY PROCEEDINGS

MODERN commercial methods, which depend so much upon the credit structure, have caused the development of bankruptcy laws and a special bankruptcy court procedure. Trading is engaged in over vast expanses of territory by men who are strangers to one another. Without laws governing the solvency of business men, distant creditors of insolvent persons, on the one hand, would often fail to collect debts, and solvent business men, on the other hand, would often be forced into insolvency by frightened creditors.

Thanks to the foresight of the makers of our federal Constitution, Congress was not only given the power to regulate commerce among the several states but was empowered "to establish uniform laws on the subject of bankruptcy throughout the United States." As a consequence, virtually all the litigation concerning bankruptcy is determined in the federal courts. The task of reporting the proceedings devolves usually upon the reporter assigned to the "federal run."

Eleven years after the adoption of the Constitution, Congress passed a set of laws to govern bankruptcy. They were repealed after four years, and between that date and 1878 three different sets of laws were enacted but afterwards repealed. The present act represents laws passed and amended in 1898, 1901, 1903, and 1910. Because of the failure of Congress before 1898 to provide a continuous bankruptcy act the various states enacted bankruptcy laws from time to time. Since 1898, however, the various state laws have been dormant and, except for certain provisions that are not duplicated in the federal act, are never applied in the courts. The federal bankruptcy laws are fairer to creditors than are most of the state laws on insolvency, as subsequent sections will explain.

**Principles of the Act.**—Any person who finds himself hopelessly in debt may, under the common law rule which governs the relations between debtor and creditor, assign his assets to some or all of his creditors with a view to abandoning his business—if he has any—and with the hope that his creditors will accept the assignment of assets as payment in full of his obligations. This practice, however, neither discharges the debtor legally from the future payment of the remainder of his debts nor makes for equality among his creditors. To remedy this condition the federal bankruptcy act embodies three principles that are not inherent in the common law that relates to insolvency: (1) It discharges the debtor from future liability of his present debts; (2) it enables the creditors to secure title to all of the debtor's assets; and (3) it provides for a *pro rata* distribution of the assets among all the creditors. The act also goes further in providing for *administration* of the debtor's assets in order that they may be conserved for creditors.

**Petitions in Bankruptcy.**—The stages through which bankruptcy proceedings pass are four: the petitioning stage, the stage of adjudication, the stage of administration, and the stage of discharge. At all four points the procedure is directed by the federal District Court. The procedure is somewhat similar to that observed in the probate courts. A case begins when a petition is filed with the Clerk of the court. If the debtor is subsequently adjudicated a "bankrupt," his assets are seized and liquidated, his creditors are paid, and he himself is discharged from any future obligation to pay his existing debts.

A petition in bankruptcy is either *voluntary* or *involuntary*, depending upon whether it is filed by the debtor himself or by his creditors. A debtor who wishes to surrender his assets to his creditors voluntarily employs an attorney to prepare and file a petition. Attached to the petition is a verified schedule of all the debtor's assets and liabilities. Immediately the petition is filed the matter is referred to the Referee in Bankruptcy, a licensed attorney appointed by the District Judge for a term of two years. The Referee's clerk notifies all of the creditors listed in the schedule and, if they offer no objection, the debtor is adjudicated a bankrupt. Afterward, on the debtor's applica-

tion, the District Judge "discharges" him. Any person or any partnership may file a voluntary petition in bankruptcy, but corporations are excluded from this provision of the law.

An involuntary petition is filed by some or all of the debtor's creditors with a view to seizing his assets before they are further dissipated, or to prevent him from treating some of his creditors as preferred creditors to the disadvantage of the others. Creditors, under the federal law, may force into bankruptcy corporations and partnerships and all individuals with debts of \$1,000, except wage earners and farmers. To begin an *involuntary bankruptcy proceeding against a debtor whose creditors number less than twelve*, it is necessary for only one creditor whose claim amounts to \$500 to file a petition; but if the debtor has more than twelve creditors, it is necessary that three of them whose claims aggregate \$500 join in the petition. In answer to an involuntary bankruptcy petition, the debtor may deny that he is insolvent and that he has committed an "act of bankruptcy."<sup>1</sup> Upon this issue a hearing is held to determine the facts. If the debtor is found to be insolvent, or if he is found to have committed an act of bankruptcy, he is adjudicated a bankrupt.

**Reporting Petitions.**—The reporter prepares news stories about petitions in bankruptcy in about the same manner that he reports pleadings in civil actions. The petitions are filed with the same court Clerk as are pleadings in the federal courts, except that in large cities the office of the Clerk has a special "bankruptcy department." Most petitions in bankruptcy are worth only a routine story and are frequently published in the column devoted to "statistics." Ordinarily, the reporter merely relates whether the petition is voluntary or involuntary, and states the name and identification of the petitioner, and the amount of his scheduled assets and liabilities. These details, however, are often of more than ordinary interest. Sometimes, the fact that a certain person or a long-established firm is the petitioner in a voluntary petition, or is the respondent in an involuntary petition is of interest. Sometimes, the surprisingly small or large amount of assets or liabilities is a point of interest. Some-

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<sup>1</sup> See p. 186 for a list of the acts of bankruptcy.

times, the unusual character of some of the assets is of human interest, as when certain securities held by the insolvent person are listed as valueless, or the insolvent person is forced to surrender a fine mansion or yacht or other proud possession.

In addition, when the reporter lists the creditors there is interest in the fact that certain persons or firms or banks stand to lose heavily: in some cases the bankruptcy of one firm leads to the bankruptcy of one or more of its creditors. The mere identification of the creditors, also, is sometimes of human interest, as in the insolvency of a hygienic laboratory when the majority of the creditors were country physicians who had paid deposits for laboratory work.

Involuntary petitions in bankruptcy oftentimes have behind them a story of extraordinary interest, and it sometimes devolves upon the reporter to go outside the Clerk's office to discover the facts.

An involuntary petition in bankruptcy was filed today in federal court against The Henry Malone company, 149 Pennsylvania avenue, dealing in laundry machinery and supplies, as a result of a meeting yesterday of representatives of thirteen creditor banks and finance corporations at which it was charged that Henry Malone, president-treasurer of the one-man concern, had sold them duplicated notes and other financial paper of doubtful value to the extent of about \$1,300,000. Malone's total liabilities are \$2,726,000.

The transactions through which Malone sold a total of \$2,726,000 of notes and other negotiable paper given to him by laundrymen when they purchased supplies from his firm, will become the subject of an immediate grand jury inquiry, inasmuch as an attorney has made an appointment with the prosecuting attorney for this afternoon to make complaint against Malone's methods.

A typical instance of how Malone is alleged to have sold duplicated notes was cited at the creditors' meeting in the account of the Modern Method Laundry company, 630 West Ninth street. B. C. Judson, president of the laundry company, related last night how he had trusted Malone to handle a \$14,000 note for him at the Fifth National bank.

The original note, Judson said, was for one year. Malone told him after this note had been sold to the bank by Malone, that the bank wished a new note for ninety days. Judson gave him another note for \$14,000 and Malone said he would tear up the old note. Instead, he sold the new note to the Fifth National bank, and both notes are now held by the bank against Judson.

Similar transactions with Judson in which Malone, acting as his friend, took his notes and sold them to the banks, then took new notes on one pretext or another and sold them, have totaled \$175,000. Judson said he expects to lose \$50,000 or more through these duplications.

The methods of operation by which Malone has involved 187 laundrymen in the middle west and the south, most of them struggling operators who needed credit on which to start in business, were learned by credit investigators during a survey of several weeks.

Malone acted as a friend and banker to the laundrymen with whom he did business and they knew him as "Hank." Aside from the duplication alleged by Judson and the other laundry owners, numerous instances were cited by several creditors of Malone's tactics.

Many notes which Malone sold to the banks he endorsed, "The Henry Malone Company, without recourse." This meant that he did not accept responsibility for paying the notes if the laundrymen defaulted.

Circumstances varied the method employed by Malone. Oftentimes, a laundryman who had given his note for his original equipment would require more equipment. In that event, The Henry Malone company would suggest that instead of making a second note for the added amount, one note be made for the total. Usually the laundryman accepted, and the Malone company, it is charged, would neglect to destroy the original note, thus giving it possession of two notes—one for the original sum alone and the second for the original sum plus the addition.

Again, it often happened that when the bank or loan company called upon the laundryman for payment of the note given originally to the Malone company for

equipment, and negotiated by the Malone company at a bank or finance corporation, that the laundryman was unable to pay. He, of course, would inform the Malone company of his plight. Thereupon, the Malone company would advance the laundryman cash with which to meet the note, taking from him a new note which would be negotiated at some other financial source. In this way the Malone company made it appear that everything was running smoothly with its customers and itself.

In preparing news stories from petitions in bankruptcy reporters must be careful in copying the names and amounts listed. To refer to a voluntary petition as an involuntary petition, or to confuse the name of a solvent firm or person with an insolvent firm or person is to invite libel actions against the newspaper. To confuse the names of creditors or the amount of their claims may also result in loss of money or reputation to a person or a firm. To refer to the respondent in an involuntary petition as a "bankrupt" is libelous; for a debtor is never a bankrupt until he has been adjudged so in court, and the mere filing of a petition by a debtor's creditors does not make the debtor a bankrupt.

**The Receiver.**—When a petition in bankruptcy is filed the Referee notifies the creditors. If the creditors present sufficient evidence to show that there is a danger of the respondent making away with his assets, or if the business of the respondent is of such a nature that the creditors are likely to recover more assets by having the business continued, the Referee appoints a Receiver to take possession of the business and conduct it until such time as the debtor has been adjudicated a bankrupt. A Receiver is a temporary officer who acts for the court and in the interest of the creditors until the debtor has been adjudicated a bankrupt; he is presumed to have special knowledge of the particular kind of business in which the debtor is engaged, as for example, a bank or a railroad. In the case of a voluntary petition in bankruptcy, the Receiver is frequently able to effect a *composition* with the debtor's creditors, that is, negotiate an agreement with the creditors to settle all claims against the

debtor on a percentage basis, say, forty cents on the dollar. If this is done, the Receiver returns the debtor's property to him and the petition is withdrawn from the court.

Glenn Trowbridge was appointed receiver of The Henry Malone company, 149 Pennsylvania avenue, late yesterday by Robert P. Trent, referee in bankruptcy, on the petition of W. S. Redwine, attorney for six creditors.

Bond for Mr. Trowbridge was fixed at \$80,000. He is to protect all property and assets of the company pending a hearing of involuntary bankruptcy proceedings instituted against the concern Tuesday.

Creditors will begin an investigation in an effort to ascertain the exact financial status of the company.

Receivers of certain kinds of corporations, such as railroads and steamship lines, not only guard the assets of the corporation and conduct the corporation's business, but frequently make large outlays for capital improvements; for the corporation possesses value to the creditors only to the extent that it is a going concern.

Receivers for the Chicago, Milwaukee, and St. Paul railroad have spent approximately \$30,000,000 in the last two years on capital improvements, according to a report filed yesterday in the United States district court. The major expenditures consisted in the building of the Gallatin gateway to the Yellowstone National park, the installation of roller bearing equipment on passenger trains, and the inauguration of two new passenger trains.

**Adjudication.**—In the case of a voluntary petition, the process of adjudication is nearly always a matter of form. In the case of an involuntary petition, the debtor frequently employs an attorney and contests the effort of creditors to have him adjudicated a bankrupt. Sometimes, creditors discover in the adjudication hearing that the debtor is not in the financial straits that they had presumed, and they withdraw the petition and ask that the Receiver be discharged. Sometimes, the

debtor is able to defeat the creditors in their effort to have him adjudicated a bankrupt and the court orders that the petition be dismissed

When the debtor is contesting an involuntary petition the issue in dispute is whether or not the debtor is solvent and whether or not the debtor has committed any act of bankruptcy. A debtor may be adjudicated a bankrupt if he has committed any of the following acts:

1. Conveys, transfers, or removes any part of his property with intent to defraud, hinder, or delay his creditors.
2. Admits in writing his inability to pay his debts and his willingness to be adjudged a bankrupt.
3. Makes a general assignment for the benefit of his creditors, or applies for a Receiver or Trustee in insolvency.
4. Transfers while solvent any portion of his property to certain creditors with the intent to grant them a preference over other creditors.
5. Allows while insolvent any creditor to secure preference by legal proceedings, such as giving any creditor a lien.

Sometimes the Referee presides over the adjudication hearings and recommends a decision to the District Judge, which is ordinarily approved as a matter of form. In other cases, the matter is brought directly before the Judge. In order to determine the facts, a jury is sometimes impanelled.

Homer Dean, state bank superintendent, won the first important step of a long fight to put the affairs of Newton Cummings, former president of the Cummings Motor Sales company, into bankruptcy yesterday when a federal grand jury decided that Cummings committed an act of bankruptcy three years ago.

The act consisted of the negotiation of a \$15,000 third mortgage on his home at 1765 Chamberlin avenue, to Mrs. Polly Barker on Dec. 19, 1925, giving her a preference over other creditors while he was knowingly insolvent, the jury found.

Attorneys for the receiver will ask Federal Judge U. S. G. Hart to sign an order adjudicating Cummings a bankrupt. However, this step will be held up pending hearing upon a motion for a new trial, and, if necessary, an appeal to



the United States Circuit Court of Appeals by defense attorneys Paul Major and Nicholas J. Kulp.

The decision yesterday came at the end of a long fight by the state bank superintendent to throw the assets of Cummings into bankruptcy. Once before, a federal jury declared Cummings was solvent at the time of the negotiation of the mortgage, but a new trial was granted.

Mr. Dean brought the suit as receiver for the Guaranty Trust company, the Dover Savings Bank, and the Perryville State Bank. It was alleged that Cummings owes about \$50,000 on notes and other papers endorsed by him.

After a debtor has been adjudicated a bankrupt he is amenable to the orders of the federal District Court. If he disregards the orders of the court, he may be cited by either the Judge or the Referee to show cause why he should not be held in contempt of court. A great deal of fraud is revealed in bankruptcy proceedings as a result of suspicious creditors applying for orders to examine bankrupts in formal hearings. Business frauds are committed every year to the extent of millions of dollars, and private creditors have organized the National Association of Credit Men, which employs investigators to combat the evil. In 1927, the association obtained about 200 convictions. The methods used by clever defrauders are interesting to relate and when published in the newspapers serve as warnings to business men. The schemes that are most used are clever variations in methods of reshipping goods to be sold, and the destruction of records. Often, too, investigators in search of goods, such as jewelry and automobile parts, find them cached within false walls and in many other unusual places.<sup>2</sup>

**The Trustee.**—After the adjudication, the creditors meet with the Referee to elect a Trustee; in most cases involving small amounts the Referee appoints a Trustee with the consent of the creditors. Sometimes, the creditors are in two camps as regards the election of a Trustee and a report of the election makes an interesting news story. The duties of the Trustee are to take possession of the bankrupt's assets, to convert them into cash, and to pay the cash to the creditors in the form of dividends. He not only acts in every way to conserve the assets,

<sup>2</sup> Cf. J. T. Young, *The New American Government and Its Work*, footnote, p. 257.

but negotiates various transactions in order to liquidate the assets which are in the form of real and personal property. To conserve the assets of a bankrupt, the Trustee may employ watchmen and appraisers, and he may even temporarily reorganize the bankrupt business and conduct it until it can be sold. To convert the assets into cash sometimes requires the sale of an estate, a timber tract, a mine, a railroad, or a race horse.

## (1)

The Herbert Young Dairy company, 30th and Allen streets, was sold yesterday in the federal district court to the Zander Dairy company for \$422,000. The sale did not include the real estate of the Young company.

Bankruptcy proceedings were brought in the federal court two months ago against the Young concern, one of the oldest milk distributors in the city. Stockholders and west side banks were reported to be the heaviest losers. Previously, creditors had attempted to form a syndicate to reorganize the company.

Assets of the company were listed as \$600,000, and liabilities at \$800,000.

## (2)

The house furnishings of Mrs. Claire Martin Strand, prominent society woman, are to be sold soon at one of the large art galleries, according to Melvin Sweet, her attorney, who said today that the proceeds should be enough to pay in full Mrs. Strand's debts, which amount to nearly \$70,000.

After the sale, Mrs. Strand will give up her present home at 123 Central avenue.

At the inspection of Mrs. Strand's home last Wednesday by attorneys for her creditors and the appraisers, Mr. Sweet discussed plans with them for selling the house furnishings. Mrs. Strand was adjudicated a bankrupt Tuesday afternoon in federal court.

From time to time in many large bankruptcies, the Trustee pays dividends to the creditors on the order of the court. This fact is frequently of news value

the Judge of the District Court. He is henceforth free from future liability for the debts existing at the time he was declared a bankrupt. In some cases, however, the creditors contest the debtor's application for a discharge, and a hearing is held. The burden of proof at the hearing is upon the contesting creditors.

**Receiverships in State Courts.**—Although most of the bankruptcy cases are in the federal courts, a great many *receiverships* are handled in the state courts, the number varying according to the character of the insolvency laws in the various states. Under the federal law, for example, a farmer cannot be declared a bankrupt by the petition of creditors, but under some state laws he can; furthermore, since some of the state laws permit receiverships by which payments can be made to preferred creditors, some creditors take advantage of these provisions by filing involuntary petitions in a state court instead of the federal courts. The receivership procedure in state courts is transacted in the courts of equity, an application for a receivership being a form of bill in equity.

**Improving Bankruptcy Procedure.**—Although the present federal bankruptcy law is the best and fairest that has been devised, fraud continues to an enormous extent and there are unwholesome practices carried on in the name of bankruptcy. One unwholesome condition is that there are too many receiverships. Some of the receiverships result from the fact that unscrupulous attorneys in certain cities, in order to obtain fees, force into bankruptcy small firms which otherwise would be able to avoid insolvency. Other unnecessary receiverships result from the practice of wage earners in the grip of loan sharks taking advantage of the bankruptcy law; they file hundreds of small petitions which merely consume the time of the court and which could be avoided if the state legislatures would pass laws to curb the loan sharks. The recent increase in installment buying has also resulted in an increase in the number of small bankruptcies that consume the time of the courts.

Of more importance is the fact that too many big business enterprises are in the hands of receivers, that is to say, in the hands of judges, referees, their political henchmen, and at-

some practices described in the foregoing paragraphs do not exist everywhere, but in jurisdictions in which they do exist the newspapers can serve the public interest by examining with care all the details of bankruptcy administration, and publishing proofs of dishonest practices.

### EXERCISES

1. In the light of all the matters discussed in Chapters I-VII, review thoroughly Chapter II.
2. Distinguish between a bankruptcy and a receivership.
3. Write a news story based upon the annual report of the Referee in Bankruptcy in your district made to the federal District Judge.

taxes that today the citizen is not awed by Uncle Sam. The extension of the federal government's activities, moreover, has made the court rooms and offices of the local Federal Building places of much concern to the ordinary citizen and, therefore, important to the newspaper. Among the recent federal statutes that affect the individual citizen are: the income tax law, which requires every unmarried man with a net income of \$1,500 or more, and every married man with a net income of \$3,500 or more to file an income tax return; the new laws governing bankruptcy; the so-called Dyer Act, which prohibits the interstate transportation of stolen automobiles; the National Prohibition Act; the Anti-White Slavery Act; the Anti-Narcotic Act; the pure food and drugs acts; and the anti-trust acts.<sup>1</sup>

In explaining the chief news sources in the Federal Building, this chapter lists the activities and duties of the various officials and describes some of the news stories which the reporter writes. The officials are grouped according to the departments of government at Washington to which they are responsible. At every session of Congress, however, the various minor administrative units are shifted from department to department, and it is not always accurate to assume that a particular administrative unit has a permanent classification.

#### THE POST OFFICE DEPARTMENT

**The Postmaster.**—The head of the postal service in each city is the Postmaster. He is always a local citizen and is appointed by the President on the recommendation of the Congressman from his district or the United States Senators of his state who are of the same political party as the President. In all classifications of postmasterships except in the larger cities the appointments are governed by civil service requirements,

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<sup>1</sup> "If you will merely take a chart of the executive departments of the national government (State, War, Treasury, etc.), showing their organization and activities even twenty-five years ago, superimpose upon it a similar chart of the ten Departments today (to say nothing of the fifty or more detached boards and commissions), you will have some measure of the fairly startling expansion of activities of simply our national government."—F. A. Ogg, *Recent Advances in Government, Significant Lines of Progress during the Past Quarter Century*, p. 100.

but most often in large cities political considerations determine the appointment. In the larger cities many of the duties of the Postmaster devolve upon the Assistant Postmaster, a civil service appointee.

Announcements of innovations in service, new postal regulations, and monthly reports of postal sales are furnished by the Postmaster and the Assistant Postmaster. Some of these announcements come from Washington but are given local publication by the local postal officials. These announcements concern everything from warnings not to buy stolen postage stamps to announcements that mail formerly addressed to Petrograd should now be sent to Leningrad.

## (1)

Mail matter bearing stickers on which appear the words "Protest Against Marine Rule in Nicaragua," is being returned to the senders, according to Postmaster John J. Kiely. The stickers are being circulated by the All-America Anti-Imperialist League.

Postmaster Kiely explained yesterday that the order barring from the mails letters containing the stickers had come from Horace J. Donnelly, solicitor of the Post Office Department at Washington. The postmaster said he notified the league of the department's ruling on Jan. 3 and since that time the mail with the unauthorized stickers had been returned to the senders. Where the sender's address was not given, the mail has been sent to the dead letter office at Washington.

The postmaster said the mail was barred under the provisions of Section 212 of the Penal Code.

## (2)

Postmaster George Rundell yesterday issued a plea to spring movers to notify the post-office of their change of address to assist in speeding up the mail.

"More than 13,000 changes of address were filed with the post-office last year," the postmaster said. "Many persons, however, failed to report their moving and, as a result, suffered loss of valuable letters and parcels or serious delay in their delivery."

(3)

April receipts of the local post-office, totaling \$77,060 49, mark an increase over those of April, 1927, it was announced today by Assistant Postmaster Arthur Hardin.

**Superintendent of Mails.**—Most of the announcements regarding local mail service come from the office of the Superintendent of Mails. This official announces all changes in carriers' routes, times of delivery, extradelivery zones, and delivery extension.

Three new rural free delivery routes in Jackson suburbs were announced today by G. F. Fitch, Superintendent of Mails.

Residents of West Wanda addition, who have been served by R.F.D. route No. 6, ending at Monroe street, will henceforth be served by a special route. Starting today, thirty-four families living in Oak Park replat, east of the city limits, will be served by a new route on R.F.D. No. 2. Beginning February 1, mail will be delivered to the door of persons living in Kellogg addition west of the city by a new rural route to be known as No. 11.

**Post Office Inspectors.**—These officials furnish the most interesting news that comes from the local postal authorities. In every important Federal Building there are one or more post office inspectors who work under instructions from the Division of Inspectors and Mail Depredations at Washington, which is responsible to the Fourth Assistant Postmaster General. For the purposes of their work the country is divided into fifteen inspection districts, and there are more than 500 inspectors. They perform every sort of investigating work from auditing postal records to tracking down robbers of mail trains. They are sometimes accountants, sometimes detectives. The scope of their work is better understood when it is pointed out that postal frauds and robberies amount to a billion dollars a year.<sup>2</sup>

<sup>2</sup> Address of Horace J. Donnelly, Sr., Assistant Solicitor, Post Office Department, Oct. 31, 1923. Cited by R. L. Mott, *Materials Illustrative of American Government*, p. 121.

Sometimes the Post Office Inspector, in the course of his auditing work, discovers postal fraud; but most often he investigates frauds after he has received tips and reports from postal authorities and private citizens. If the Inspector believes that he possesses sufficient proof against a suspected person, he has the suspect arrested by the United States Marshal and tried in the United States District Court. Sometimes, when the Inspector learns that certain persons or firms are using the mail for fraudulent purposes, he not only gathers evidence for the purposes of prosecution but requests the Post Office Department at Washington to issue a "fraud order." On receipt of this order by the Postmaster at a designated post office all mail addressed to the suspect is stamped "fraudulent" and returned to the sender.

To protect Americans who might be induced to part with their money on an apparently alluring secret process for the rectification of raw spirits at a cost of only 3 cents a gallon, or a book called "The Distillers' and Blenders' Practical Guide," the Post Office Department has issued a fraud order against Nelson P. Kildow, of Utica, New York, and Postmaster Roy C. Wells has been directed to return to senders all letters addressed to Kildow, it was announced today.

Kildow has been circulating through the mails offers of the book, which is claimed to contain complete formulas for whiskies, gins, and other high grade liquors, at \$12.50 a copy. An additional offer of a "process and closely guarded secret" for rectifying raw spirits is made for \$250.

Scores of interesting news stories concern postal frauds. Many of them are stories of human interest because of the unusual nature of the fraud or the peculiar methods used by the violator of the postal laws. Telling fortunes, selling Bibles, dogs, pigeons, stocks, land in Florida, and instruction by correspondence, diagnosing diseases by correspondence, employing women to do "home work" on embroidery, forging money orders, sending obscene literature; these are some of the fraudulent schemes which reporters have written about in an interesting manner.



In convicting "Bishop-Doctor" James R. Baily, head of Oriental university, where degrees of learning were shown to have been purchased from \$15 up, the local post-office inspectors amassed evidence of a country-wide net of diploma frauds.

Paramount in it was telltale proof that the vicious sale of credentials in medicine, surgery, and dentistry had been carried on through a score of states and the use of medicines and the knife placed in ignorant hands.

Druggists' diplomas were scattered in every direction. Correspondence courses were supposed to have been taken but it was admitted that questions sent by mail were answered without any supervision. Medicine was but one of some 700 courses. They ranged to paperhanging, beekeeping, and domestic relations.

Two courses in the medical school, which had no laboratory—not even a pair of cuticle scissors—were The Ether, What Is It; and Cookery. In the law school was a course in Life in Greece, and in the school of philosophy was one on Dramatic Reviews. Among the post-graduate medical degrees were Drugless M.D.'s and Medical Gymnast M.D.'s.

The Oriental Book Concern, a unit of the university, sold volumes on theomorphism, which Dr. Baily advanced, a spirit alphabet, and his psychic mediumship. Used postage stamps were sold as a side issue.

"Oriental university is a member of the Association of American Colleges having 50 universities and 154 colleges," the register read, "and it has 17 branch schools and affiliated institutions. It is a modern, advanced, internationalistic, non-sectarian, independent, co-educational and truly educational university."

An example of the thoroughness with which post office inspectors run down a fugitive suspect was furnished by the capture in 1927 of the D'Autremont brothers who, after robbing a mail train and committing murder in Oregon, escaped arrest for many months. Two and a half million circulars containing photographs and complete descriptions of the fugitives were printed and mailed throughout the world. Dentists were sent charts describing the fillings in the D'Autremonts' teeth; optom-

etrists were sent descriptions of their eyeglasses; every public library in the country received a circular and a warning that the fugitives often went to the libraries to read radical literature. One of the brothers finally was identified in the Philippine Islands by means of one of the circulars. He had enlisted in the army, and when his term expired a Post Office Inspector went to Manila and arrested him.

**Other Postal Officials.**—The District Superintendent of Railway Mail Service has charge of the movement of personnel engaged in the railway mail service and has relations with the railways. He is frequently a source of news when a mail robbery occurs.

No instructions relative to reports that United States marines guarding the mails here would be withdrawn had been received today by Emery W. Johns, district superintendent of railway mail service. Associated Press dispatches said yesterday that 500 marines who have been guarding the mails at various places had been withdrawn.

"They were on duty today," Mr. Johns said, "and I haven't as yet received any instructions about the matter."

The Air Mail Service, now carried on chiefly by private carriers on contract, has added an interesting source of news. The responsibility for the service is divided between local postal officials and the Superintendent of Lighthouses. The character of the mail shipments, such as animals, snakes, gold, and securities, are frequently worth news stories, as are also stories of new speed records.

#### THE TREASURY DEPARTMENT

**Collector of Customs.**—For purposes of assessing and collecting customs duties the country is divided into districts. Goods may be shipped or brought in from foreign countries only at "ports of entry." Some of these are in inland cities. The official in charge of the "port" is the Collector of Customs, who is appointed for four years by the President. He is assisted by a corps of appraisers and examiners, who are civil service employees. Goods from foreign countries destined for inland cities are shipped "under bond" by express, mail, freight, or on baggage checks, and released after inspection at the port of

entry. For the convenience of citizens there are also established in some of the smaller cities "ports of delivery" superintended by deputy collectors or surveyors. In Wisconsin, for example, Milwaukee is a port of entry, and ports of delivery are established at Kenosha, Racine, Sheboygan, and LaCrosse. Some of the goods received at the ports are of such unusual nature, or are so rare that their mere description merits a news story. Frequently, the Collector of Customs confiscates contraband goods. On certain dates he sells confiscated and unclaimed goods. At times he causes the arrests of persons suspected of violating the customs regulations. The official source for this kind of news is usually the Appraiser, who is a subordinate official in the Collector's office. The Collector also has duties in connection with the regulation and licensing of water craft which operate in navigable streams and lakes. In some ports, also, he is the Custodian of the Federal Building, and in fourteen cities he acts as an agent of the United States Public Health Service.

Walter White, collector of customs, said today that he was refusing to deliver to the Stackpoole Book company, 12 West Washington street, twenty-four copies of an unexpurgated edition of *Arabian Nights*.

The action was taken, he said, in compliance with a recent ruling of the Treasury Department at Washington. Officials in the Treasury Department have inaugurated a campaign to protect the morals of the people of the United States and bring about "closer cooperation with the Post Office Department" by issuing orders to customs officials which are construed here as possibly banning the work of many of the great writers of the past, including Balzac and Swift.

Collector White admitted that only last week, prior to receiving the ruling of the Treasury Department, he had released to a local book dealer several copies of Boccaccio's *Decameron*.

Working under the direction of the local Collector of Customs and from the Treasury Department at Washington, are operatives, sometimes called *customs agents*. They make reports

to Washington, to the local United States District Attorney, and the local Collector of Customs.

Earrings, said to have formed part of the crown jewels of Russia, were seized here late yesterday by James Y. Whitney, Chicago customs agent, and placed in the vault of the federal building by Thomas Ingersoll, collector of customs, for nonpayment of duty.

A newspaper account of their purchase in 1922 by B. J. Boston, 185 Twenty-fifth street, from a patient in a Berlin sanatorium, who said she was the Grand Duchess Anastasia, daughter of the last czar, was responsible for bringing the earrings to the attention of customs officials.

The jewels were not declared when they were brought to this country by Mr. Boston's daughter, Mrs. Huston Murray. She was 16 years old at that time and says she did not know they should have been declared at the port of entry.

**Collector of Internal Revenue.**—Federal taxes levied within the United States, as distinct from taxes levied upon merchandise imported into the country, are collected by the Internal Revenue Bureau. Within the United States there are sixty-four internal revenue districts. The chief official of the district is the Collector of Internal Revenue, who is assisted by various deputy collectors and clerks. He collects the following classes of taxes: an income tax levied upon corporations and individuals; an estate, or inheritance, tax; a manufacturers' excise tax; a distilled spirits tax; a tobacco tax; an oleomargarine tax; a tax upon legal papers collected by means of documentary stamps; a pro-narcotics tax; an admissions and club dues tax; and a few miscellaneous taxes that are changed by statute from time to time. Monthly reports of tax collections in certain classes, such as taxes on tobacco, are released by the Collector to newspapers, and are of interest because they indicate the trend of business in certain industries.

*The Income Tax Division* of the Collector's office is a source of news, especially during the period from January 1 to March 15, when returns are being filed. Since the income tax law went into effect newspapers have performed a meritorious

public service by explaining the complex process of filing income tax returns. Statistics as to the number of returns filed and the number remaining unfiled near the legal deadline form the basis for routine news stories. Announcements and tabulations regarding incomes and income tax payments are furnished by the Income Tax Division from time to time, especially following the dates at which quarterly payments are made.

## (1)

Tax collections for the northern district of Illinois for 1926 incomes totaled during the year \$176,312,003.44, Mrs. Mabel G. Reinecke, Collector of Internal Revenue, announced yesterday. The returns include the fourth installment which was due on December 15. The 1926 returns are approximately \$14,000,000 in excess of the returns for 1925.

"The increased returns are due solely to the prosperity of the section and the country in general," Mrs. Reinecke said.

## (2)

Local income tax collections this year will exceed collections made in 1927, it was predicted yesterday while hundreds stormed the offices of Oswald C. Andrews, collector of internal revenue, at the federal building, in order to file their returns before the midnight deadline.

At noon it was announced that taxpayers of the district had paid \$1,389,712.52, as compared with \$1,172,125.82 paid in at the same hour on March 15, 1927—an increase of \$217,586.70.

But this, it was predicted, was only half of the amount that would be paid in before midnight.

Across the face of more than 100 checks received in payment for taxes and on letters accompanying ten other payments, was written: "We protest against any part of this payment being used for the enforcement of the Volstead act, or any other crank legislation."

The identical wording of the inscriptions in each case indicated, Mr. Andrews believes, that an organized group took this method of expressing their dissatisfaction with prohibition legislation.

Guards from the special intelligence unit of the internal revenue department

stayed throughout the night protecting the money received late yesterday from taxpayers.

*The Prohibition Division.*—Although bills have been frequently introduced in Congress to make the Prohibition Division an independent bureau, it remained, in 1928, a division in the Bureau of Internal Revenue. The reorganization of the prohibition enforcement machinery in 1926 resulted in the division of the country into twenty-four enforcement districts. At the head of each is an Administrator who has his office in a large city. In cities in which there is no Administrator there is usually a Deputy Administrator, and in the smaller cities the directing head of prohibition enforcement is called the Chief of the Local Unit. The subordinates in the local service are called *agents*. Frequently "sponge squads" from Washington are sent temporarily to aid local enforcement officers. At the beginning of prohibition enforcement, newspapers reported quite fully the raids made by prohibition officers, but in recent years the interest in their activities lies more in the methods they use and the unusual incidents growing out of arrests and raids than in the mere chronicling of routine enforcement. Although conditions have improved, the prohibition enforcement personnel has not been thoroughly honest and newspapers have been cautious about giving the agents and officials more credit than they deserved. In 1927, the prohibition operatives were placed under civil service regulations and were required to pass examinations as to character and intelligence.

Two carloads of whiskey, shipped as machinery from Detroit and consigned locally, were confiscated yesterday in a raid by prohibition agents in the Chicago & Northwestern railroad freight yards.

The liquor was estimated to be worth \$100,000 on the market today. Examination by prohibition agents showed the whiskey to be a genuine Canadian product. The shipment consisted of 4,076 quarts of Mountain Ridge bourbon, Genuine American bourbon, and Hiram Walker Three Star Scotch.

Seven dry agents, led by Bronston Murray, deputy administrator, raided the freight yards following a tip received

| at prohibition headquarters. The liquor |  
| immediately was dispatched to the prohi- |  
| bition warehouse for safe keeping. |

In each prohibition enforcement district one or more attorneys are appointed to furnish legal advice to the enforcement officers, and to defend them in the courts if they are brought to trial by the state governments for alleged crimes committed in connection with their enforcement duties. The attorneys are directed by an Assistant Attorney General in the Department of Justice at Washington.

A special Narcotic Squad of investigators is attached to the Prohibition Division. In 1928 there were 164 narcotic agents. Their duty is to investigate the illegal sale and smuggling of drugs.

| Smashing three barricaded doors and |  
| two ordinary doors, narcotic agents, led |  
| by Earl Below, local chief, early yester- |  
| day raided an opium den at 1598 West |  
| Market street. The place was described |  
| by the agents as a headquarters of the |  
| Hip Sing Chinese tong. The agents ar- |  
| rested Sin Tai, the alleged keeper. |  
| Quantities of opium ready for use and |  
| several pipes were found on the roofs of |  
| nearby buildings, tossed there by the in- |  
| mates. |

**Treasury Operatives.**—The Treasury Department maintains an intelligence unit for purposes of investigating violations of the revenue laws. The operatives specialize in different branches of the revenue service. They investigate counterfeiting of currency and government bonds, tax frauds, and violations of the National Banking Act. Some of the most interesting news stories furnished by them concern counterfeiting. The Treasury Department, under some circumstances, permits other departments of the government to make use of the services of these agents for investigation.

| A combined gang of counterfeiters and |  
| bootleggers operating throughout the |  
| Northwest and as far south as Louisiana |  
| and Texas, were connected today by |  
| treasury operatives in Seattle with the |  
| activities of three Seattle men, arrested |  
| in Medford, Oregon, on charges of issu- |

ing \$240,000 worth of counterfeit travelers' checks.

Simultaneously, search was started for a woman said to be a member of the ring, who Saturday withdrew a large sum of money from the account in a Seattle bank of Earl U. Lahne, one of the trio under arrest in Medford, Oregon.

Three more men are under arrest in Louisiana.

Arrest of a bootlegger in Portland enabled treasury operatives to uncover an additional \$18,000 in counterfeit travelers' checks.

**The Revenue Cutter Service.**—The Treasury Department maintains the Revenue Cutter Service at a score of coast stations and at four stations on the Great Lakes. The men in the service furnish information to newspaper reporters regarding disasters and storms. This news source is ordinarily handled by the reporter on the "marine beat," for the Service does not maintain headquarters in the Federal Building.

**The Life Saving Service.**—On the seacoasts and at dangerous places on inland lakes and rivers the Treasury Department maintains the Life Saving Service. This Service, also, is covered by the reporter on the marine beat because headquarters are not usually located in the Federal Building.

The Dolphine, a small excursion boat plying between Lincoln park and the Municipal pier, sank a mile off shore this afternoon. Captain B. T. Burnett, of the Life Saving Service, said he believed that eleven persons had drowned. Fifty passengers were said to have been on the boat.

#### THE DEPARTMENT OF JUSTICE

**The United States District Attorney.**—The national government's prosecution officer in the federal judicial district is the United States District Attorney. He is appointed by the Attorney General for four years and is responsible to him. The District Attorney has several assistants, known as assistant district attorneys, some of whom reside in different cities in the district. When a person is arrested on a charge of violating a federal law the District Attorney represents the government at the preliminary trial; he prepares the government's case prior to the regular trial and prosecutes the accused person in the



federal District Court; he coöperates with the investigators of the various departments of the government and signs informations for the arrest and trial of suspects; he presents certain allegations of law violations to the federal grand jury and aids generally in enforcing federal statutes.

The principal crimes which the District Attorney prosecutes are: counterfeiting, postal frauds, operating lotteries, transporting prize fight films, smuggling, embezzlement of national bank funds; violation of the pure food and drugs acts, the meat inspection acts, the National Prohibition Act, the Anti-Narcotic Act, the Anti-White Slavery Act, the act which forbids interstate transportation of stolen automobiles, the neutrality laws, the immigration laws, and forestry regulations. The District Attorney also prosecutes cases in violation of the various anti-trust acts, a special Antitrust Unit being maintained in some districts. Some district attorneys are also quite active in seeking injunctions in connection with labor strikes.

The District Attorney represents the government also in civil suits to which the government or its officers is a party, such as suits against the Alien Property Custodian and the United States Veterans' Bureau and suits by the Prohibition Division to confiscate automobiles and boats. In all suits or proceedings in his district against collectors or other revenue officers for any act done by them he appears for the defendant officials. In suits arising out of the provisions of the law governing national banks in which the United States or its officers are parties he represents the government.

The District Attorney is consulted whenever a pardon or parole is sought for a person in federal prison who was prosecuted by him. All applications for pardons and for clemency are made to the President who refers them to the Attorney for Pardons in the Department of Justice, who refers them to the District Attorney and District Judge in the particular district in which the prisoner was tried. The Judge and District Attorney make whatever recommendations they think just and send the report back to the Department of Justice and thence to the President. Frequently stories and rumors about pardons and paroles are important news, depending upon the notoriety

of the prisoner, the importance to the community of his incarceration and the political significance of the action.

District Attorney W. B. Dunne today admitted that an effort had been made recently by La Grange county politicians to obtain a pardon for J. W. Prescott, former U. S. Marshal here, who was sentenced in 1921 to the Atlanta penitentiary for seven years along with four members of the "million dollar" Sears bootleg ring.

The District Attorney said today that he had refused to recommend a pardon. He added that Prescott's friends had presented to the Department of Justice a formidable list of petitioners, including five members of the grand jury that indicted Prescott and three members of the trial jury that found him guilty.

**The Secret Service.**—Working with the District Attorney are the "special agents" of the Department of Justice, sometimes referred to as the Secret Service. These agents are attached to the Bureau of Investigation of this department. They investigate any crime against the United States which is not in the province of the separate intelligence units of the various departments. Among the matters to which they devote their efforts are embezzlements by government employes, attempts by private individuals to defraud the government, violations of the Mann Act, and violations of the act which prohibits the interstate transportation of stolen motor vehicles. They are seldom concerned with investigations which the specialized agents make, such as those relating to violations of the pure food and drugs acts, the Anti-Narcotic Act, counterfeiting, and postal frauds. They are ordinarily reticent so far as newspapers are concerned, but make complete reports to the District Attorney, who has more discretion in regard to furnishing information.

George Illis, disbursing deputy in the U. S. Marshal's office, was arrested late yesterday by government secret service men on charges of embezzlement of government funds and forgery.

It is believed that Illis has embezzled at least \$1,900 during his three years' employment. He was arrested in his office and permitted to execute bond for \$2,000.

He will be given a hearing tomorrow before U. S. Commissioner Byron Gray.

Illis was a trusted employe of the marshal's office. He first came under suspicion about two months ago when an examination of his books showed that his disbursements did not tally with the number of employes on the pay roll.

Capt. Joseph McCarthy, head of the local branch of the secret service, was notified, and he assigned Malcolm E. Campbell, an operative, to watch Illis. It was then learned, according to District Attorney Morris, that Illis had padded the pay roll.

**The United States Marshal.**—This official is the federal sheriff. Although appointed by the Attorney General for four years, he takes orders not only from the Department of Justice but from the Treasury Department and the District Court. To help him he has several deputy marshals, some of whom are designated as field deputies and some as office deputies. Some of the deputies reside in other cities in the judicial district than the city in which the Marshal's office is located.

The main function of the Marshal is to serve as an officer of the federal court—an "arm of the law." He makes arrests on federal warrants, serves processes relating to private litigation in the federal courts, subpoenas witnesses, summons venires, seizes property on writs issued by the federal court, and may, on occasion, deputize a *posse comitatus*.

The Marshal is also the local disbursing officer of the federal district in which he is located. He pays salaries to local federal officials, disburses fees to witnesses and jurors, and pays the local government for the support of federal prisoners held in local jails. The Marshal is supplied in advance by the Treasury Department with a sum of money upon which he issues vouchers.

The Marshal is also a kind of jailer. Because the federal government does not maintain jails (except in Alaska and the territorial possessions) the prisoners awaiting trial or commitment are housed in county and city jails. For the safe-keeping of prisoners confined for a few hours while waiting to appear for trial or to make bond, there is a small grille lockup in the Marshal's office. Whenever prisoners are sentenced to penal con-

finement they are transported to jail by the Marshal. Prisoners sentenced for the term of "a year and a day" are sent to federal penitentiaries, but prisoners sentenced for a shorter time are housed in local penal institutions at the expense of the federal government. The United States has three penitentiaries. Those at Leavenworth, Kansas,<sup>3</sup> and Atlanta, Georgia, house about three thousand five hundred prisoners; a third penitentiary, at McNeil's Island, Washington, houses less than a thousand prisoners. The prohibition law has caused the federal prison population to double since 1921.

#### THE DEPARTMENT OF AGRICULTURE

**The Weather Bureau.**—The most important office of the Department of Agriculture in the Federal Building is the Weather Bureau station. There are two hundred and twenty-five important land stations in the United States that keep records. In five cities—Washington, New Orleans, Chicago, Denver, and San Francisco—the head of the station is the District Forecaster, who makes both morning and evening forecasts. In the other cities the chief official of the station is the Meteorologist, sometimes called Observer or Local Forecaster. He is allowed to make only a morning forecast for a limited area. Newspapers in cities without district Weather Bureau stations—that is to say, in all except the five cities mentioned above—receive evening forecasts by telegraph from the nearest District Forecaster. All the employes of the Weather Bureau are in civil service.

The Weather Bureau is of use to the newspaper in providing statistics on rainfall, temperature, wind velocity, and flood stage. Newspaper readers have an intense interest in weather phenomena, and farmers and many business men desire accurate information regarding the influence of weather conditions on crops. Records of the weather for every hour in the day, and of rainfall every day, and other information have been kept by the local Weather Bureau stations since 1880.

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<sup>3</sup> Reporters should not confuse the federal penitentiary at Leavenworth, Kansas, with the military discipline barracks, at Fort Leavenworth, Kansas.

*Writing the Weather Story.*—Some important newspapers carry nearly a column of weather statistics on the front page every day, and at least eight or nine times a year a weather story is of enough importance to demand a banner headline on most newspapers. Ordinarily, the reporter who has the "federal run" prepares the important weather stories, such as concerns storms, cold waves, and floods, especially when they have a local significance. In order to answer all the questions that arise in the reader's mind, it is necessary for the reporter to consult several sources. When preparing a cold-wave story, for example, he should first obtain from the Weather Bureau a table of hourly temperatures in his city. He should not only make the complete table a part of the story, but he should make use of the statistics it contains by preparing a narrative story of explanation. For example:

Christmas dawned Friday with the temperature falling. By 10 a.m. the temperature was four below zero. It mounted a few degrees during the afternoon, touching a maximum of 8 at 3 p.m., when it started to fall again and continued downward throughout the night, reaching zero at midnight. The lowest temperature, 7 below zero, was reached at 7:45 a.m., about the time those who had to work Saturday were en route to offices and shops.
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The probable duration of the cold spell is also a necessary element in the weather story. The Weather Bureau will furnish this information. The reader wants also a comparison with other spells, information which the Weather Bureau station will provide.

The cause of the cold wave ought always to be told and in language the reader can understand. The reporter who covers the Weather Bureau station can learn from the Meteorologist in a few minutes the facts and terminology of meteorology which explain temperature changes. He can explain these to his readers in terms of low- and high-pressure areas moving in certain directions. A question the reader usually asks is, "Where does the spell of weather come from?" The following

statement, for example, is sufficient to explain what the reader asks:

L. F. Jones, local meteorologist, said the high pressure area was so extensive Saturday and its center was so far northwest that there is little likelihood of warmer weather for this city until some time Monday. The cold air of the high pressure area poured into the city all morning, as shown by the 10-mile wind from the northwest.

Important, too, is the condition of the weather elsewhere. Is the cold wave general? Are other regions colder than we are here? Information regarding the conditions elsewhere are furnished by the Weather Bureau and by telegraphic dispatches which come to the newspaper. Most newspapers rewrite the dispatches, incorporating them with the local weather story.

Other elements which should be included in a cold-wave story include possible deaths caused by the cold, the effect of the cold wave upon epidemics of diseases, and fires resulting from overheated furnaces. The hospitals, city health office, and police and fire stations furnish this information.

When the reporter writes about wind or rain storms he inquires of the public utility offices as to the damage resulting to *mediums of communication and traffic*; he *inquires of the Weather Bureau and local agricultural agencies concerning the damages resulting to crops.*

The Weather Bureau not only furnishes the information for unexpected stories but furnishes weather statistics that provide the material for other kinds of interesting stories.

The month of July has been cooler and dryer than the average July. The record breaking heat predicted by the climatological division of the Weather Bureau at Washington failed to materialize.

H. D. Deering, local U S meteorologist, reports an average temperature of 70 degrees for the first two weeks of July. This is two degrees below the normal temperature of the past 50 years. The coolest July in this region was in 1891 when the thermometer showed an average of 67 degrees. The hottest July

was in 1901 when an average of 80 degrees was registered.

So far, the rainfall here for July has been 1.82 inches, or approximately 50 per cent of the normal rainfall. Mr. Deering reports that the southwestern part of the state has been the hardest hit by the drought, for in this immediate neighborhood dry conditions have been relieved by occasional thunder showers.

**Agricultural Statistician.**—In some cities the Department of Agriculture maintains an Agricultural Statistician who gathers statistics in regard to crop conditions and releases the reports at short intervals to newspapers.

Heavy rains and cold waves, delaying planting and other farm work in nearly all parts of the state, will not seriously affect crops, according to Orin Byfield, federal agricultural statistician.

Winter wheat, rye, clover, and alfalfa came through the winter with little damage, a wet spring being favorable to the crops. Seedings of clover and alfalfa are reported generally good, despite some winter killings.

The statistician also reported an increase in farm wages over the previous year. Labor by the month, without board, is reported as receiving an average of \$63.50 as compared with \$62 last year. With board, the cost is \$47.50 as compared with \$45.75 last year.

An estimate of the number of trees tapped for maple sugar in the state this spring was placed at 570,000 by the statistician. Approximately 154,000 gallons of maple syrup were produced and 19,000 pounds of sugar. The price to farmers was \$2.50 a gallon.

**Bureau of Public Roads.**—In states in which large sums are being spent by the federal government in the construction of trans-continental highways and in states in which roads are being constructed in national parks, the Bureau of Public Roads is an important news source. There are thirteen district offices in the United States and numerous sub-district offices. The Bureau works in conjunction with the state highway commissions. The progress of road and bridge construction has come to be a matter of great public interest. News concerning surveys, repairs, constructions, and directions for detours are furnished to newspapers by the Bureau. The Bureau also conducts investigations relating to farm engineering, irrigation, and drainage.

**The Forestry Service.**—In that section of the country where the lumber industry is still active the Forestry Service is an important source of news. The District Forester is the chief executive officer whom the newspaper reporter meets. He furnishes information about forest fires, camping and hunting regulations, the opening of timber reserves for public sale to vacationists and lumbermen, and projects of reforestation. A large number of feature stories may be obtained from the rangers, who have adventures while patrolling the forests.

#### THE DEPARTMENT OF WAR

**Resident Army Engineers.**—Stationed in many cities are engineers of the War Department who are connected with the dredging, repairing, and construction of harbors, and the repairing and construction of dams, locks, bridges, and levees. They make preliminary plans and surveys, prepare specifications, and supervise construction. The planning and construction of these public works are extraordinarily important in a civic sense, and news regarding them is thoroughly reported by the press.

Approval was received from Washington today of the Edward E. Gillen bid for construction of the 2,725-foot south shore arm of the Milwaukee harbor, according to Major John Klingman, resident U. S. engineer.

Work will be started soon on the project which the Gillen company obtained on its bid of \$467,835, Major Klingman said.

The Steamer Robinson arrived Monday at Jones Island, unloading 12,000 tons of stone, to be placed on a portion of the breakwater by the Gillen company, which bid successfully for that construction some time ago.

The company has already laid 78,000 tons of stone on this 2,340-foot project and will have to place 50,000 tons more before the caissons can be placed.

**Officers' Reserve Corps.**—Officers who represent the War Department in connection with the recruiting and training of reserve officers are stationed in many cities. Headquarters for "paper units" of army divisions are maintained in the largest cities. The news furnished by these army officers is of great



interest to large sections of readers, including the young men who attend the Citizens' Military Training Camps.

Drastic changes regulating the appointment and promotion of United States reserve officers were received yesterday from the War Department by Major M. Lowell Traynor, executive officer of the organized reserves here.

Under the new regulations, a second lieutenant in the reserve corps must serve four years before he can receive a promotion.

It becomes necessary, under the new rules, for an officer in the rank of second lieutenant to serve 20 years in the reserve corps before he can be promoted to the rank of major. He must serve four years as a second lieutenant, eight years as a first lieutenant, eight years as a captain, six years as a major, and four years as a lieutenant colonel before he can be promoted to the rank of regimental commander, a total of 34 years.

**Recruiting Officers.**—Offices for the recruiting of soldiers, sailors, and marines are maintained in the Federal Building by the War and Navy departments. The men in charge ordinarily are non-commissioned officers. During the War these offices furnished the best kind of news, but today the information they provide is regarded by most editors as being in the nature of free publicity.

#### THE DEPARTMENT OF LABOR

**Naturalization.**—Aliens apply for citizenship to clerks of all courts of record but most often to the Clerk of the United States District Court who, in large cities, maintains a special Naturalization Division in his office. The Department of Labor maintains in most cities an Examiner or a Director of Naturalization who examines aliens legally entitled to apply for final citizenship papers. Aliens who satisfy the requirements of the Examiner are certified to the court for admission. The court usually sets aside certain days in each term as naturalization days. The petitioner is required to file an application for admission ninety days before the date, and the names of petitioners are posted in the office of the District Court Clerk. On the day appointed the alien appears in court to take an oath in which he renounces allegiance to his former sovereign and pledges al-

legiance to the United States of America. The practice in some district courts is to hold the formal examination of the alien in open court, both the Examiner and the Judge conducting the oral examination. Regardless of whether the examinations are held in the office of the Examiner or in open court, they frequently merit news stories. Sometimes the chief interest is in the character of the alien. Prominent persons who have never been admitted to citizenship, well-known prize fighters, members of a European nobility, and many other outstanding characters are examined. Sometimes the news interest is in the fact that an applicant is denied citizenship on account of his political philosophy or his criminal record. But most frequently the interest is in the character of questions asked and the answers received.

If you think the upper house of our government is the White House, and if you knew the name of the Vice President of the United States until just two weeks ago, when you "got seeck and forgot it queeck," then you'd better stay away from the fourth floor of the federal building.

For answers like these will never make for you a royal road to citizenship in this country. And it is up on the fourth floor of the federal building where F. M. Simms, senior naturalization examiner, and his corps of fifteen assistants put the applicant through his paces in civil government.

For instance, here is a pretty typical day:

The call had been sent out for about 100 applicants. Each came down, accompanied by the necessary preliminary papers and by two witnesses. Sometimes the applicants were wrong; they didn't have the right papers; they hadn't been in the country the required five continuous years, or they hadn't been in this state the necessary one year; or they thought polygamy meant having just one wife; or they couldn't speak English, or something.

An Italian fruit vender, a Persian house painter who doubles as first violinist at Persian weddings, a hod carrier from Jugo-Slavia, an Englishman with an Oxford accent, and an alumnus of Northwestern University—and so it went.

Most of them knew their facts.

Some of them didn't.

"Do you know who holds the highest office in the United States?" one applicant was asked.

"Sure, the President," he answered promptly.

"Who is the President?"

"Mr. Coolidge."

"Could you ever be President?"

"No. Too busy down to the store," he answered seriously.

Another applicant was asked whether he believed in polygamy.

"Sure I do," he answered, and beamed self-righteously.

He saw the look of amazement on the hearer's face, and added, "Sure, I believe in having just one wife at a time."

When the test was over they explained to this man, who had also not evidenced much knowledge of our scheme of government, he had better study for the next 90 days, and then come back again.

The majority of the applicants, however, were successful yesterday and went on up to the sixth floor of the federal building where United States Commissioner Andrew Jordan, another official who helps make the timid applicant at ease with officialdom, examines them on the technical correctness of their papers.

Then each one, with his pair of witnesses, went away, to return in 90 days to the district court to take the oath of allegiance to the United States.

**Immigration.**—The passage of strict immigration laws since 1921 has resulted in an important news source. Administration of immigration regulations centers chiefly in the ports on the seacoasts and on the borders, but immigration officials are also stationed in all large inland cities. The country is divided into thirty-five inspection districts. News stories usually concern the exclusion, deportation, and smuggling of aliens, and are naturally matters of human interest. Immigration inspectors travel all about the country wherever they suspect that violators of the immigration laws are residing.

When a pistol shot rang out in the darkness the other night and ended the career of "Big Joe" Lonardo, rum runner and bootlegger de luxe, it brought to an

end the strange melodramatic captivity of Constantina Bulone, 24-year-old daughter of Italy.

Constantina today is preparing to return to her home in Italy. After spending a year in this country she is to be deported. She left Italy a prisoner and remained a prisoner all the time she was in Cleveland—until Lonardo, her captor, was murdered in a rum feud.

The girl told her story to J. Arthur Fluckey, U. S. immigration commissioner here, through an interpreter. Despite her long stay in Cleveland, she had never learned to speak a word of English. Lonardo, who had kept her a prisoner in a luxurious house, had seen to that. She had seen virtually no one but him.

It was a little more than a year ago that Constantina met Lonardo.

She was living in Licata, Italy. She had been married a short time before and her husband had gone to America. They had arranged that she would follow him as soon as he had found a good job.

Then Lonardo appeared on the scene. A native of Italy, he had been living in America for years and was an American citizen. Also, he was a very wealthy man. He was one of the biggest rum runners in northern Ohio; and when he wanted something he got it, regardless of money or expense.

Lonardo, seeing Constantina, wanted her. Constantina was dazzled by the flashily dressed man from across the sea. Lonardo wore striped silk shirts, natty American suits, had great diamonds on his fingers and in his tie. In his pockets were great rolls of American bills.

He showered gifts and attentions on Constantina. She wavered, then accepted them. Finally, Lonardo asked her to go to America with him.

She was afraid to, fearing her husband.

"Don't worry," said Lonardo. "I'm a big shot in America."

Then a little later came word that Constantina's husband had been shot to death in New York. So Constantina yielded.

Immigration quota restrictions meant nothing to Lonardo. If Constantina had crossed the Atlantic in steerage passage, she could not have passed the inspectors, but Lonardo boldly reserved rooms in the first cabin, registered as "Mr. and Mrs.

Joseph Lonardo of Cleveland"—and everything was easy.

So Lonardo brought the girl to Cleveland. But when they got here she found that his glowing tales of the "promised land" were not being substantiated. Lonardo had a wife and six children; so Constantina could not share his home and become his wife.

Instead, Lonardo installed her in a luxurious apartment. . . .

**Bureau of Labor Statistics.**—In every large city the Bureau of Labor Statistics gathers information regarding the employment conditions. The results of its inquiries are released to newspapers from time to time.

#### THE DEPARTMENT OF COMMERCE

**Coast and Geodetic Survey.**—The government service charged with the survey of coasts and rivers to the head of tide-water ship navigation is the Coast and Geodetic Survey. The Survey publishes tide tables, sailing charts, river charts, and other current information necessary to the safety of navigation. This material is of scientific, as well as practical, value. Newspaper reporters obtain feature stories from the members of the Survey.

**The Lighthouse Service.**—There are nineteen lighthouse districts in the United States. The news run, which is ordinarily covered by the marine reporter, is important in connection with marine disasters. It produces, also, stories concerning the heroic deeds of lighthouse employes who save life and property on the lakes and seas. Since July, 1927, the maintenance of airways and air mail landing fields, formerly under the supervision of the Post Office Department, has been entrusted to the Lighthouse Service. Beacons are constructed ten miles apart over the trans-continental air routes. The Superintendent of Lighthouses in the large cities has now become an important source of news in connection with airplane accidents and other important phases of aviation.

**Inspection of Hulls and Boilers.**—In several cities located on waterways there is a local Board of Steamboat Inspection, consisting of an Inspector of Hulls and an Inspector of Boilers.

They issue licenses to owners and officers of steamboats. Because it is their duty to determine responsibility for marine disasters in their districts they are important sources of information. The country is divided into twelve districts, but subdistrict stations are located in several small cities.

The Favorite, which sank in Lake Michigan yesterday with a loss of 27 lives, was operating under an official permit, according to records in the office of the federal steamboat inspection service.

The last inspection was made on May 27, 1927, by Capt. John F. Hansen, inspector of hulls, and William Nicholas, inspector of boilers. They comprise the local board of the inspection bureau. They certified that the vessel met government specifications.

The Favorite, a craft of 19 tons, is ordinarily permitted a capacity of 10 passengers and a crew of 3, but between May 15 and September 15 is permitted to carry 158 passengers and a crew of 8.

The inspectors certified that the boat carried 66 life preservers for adults, 17 for children, 2 life rafts with a capacity of 6 persons each, 2 metal life boats, and 2 ring life buoys.

**Airplane Inspection Service.**—The Department of Commerce has recently stationed in the larger cities officers to inspect airplanes. They examine pilots and planes and issue licenses. They also investigate airplane accidents. Although stationed in the larger cities, the inspectors go to the scene of airplane accidents wherever they happen in their territory.

Federal investigation of the airplane accident near Dodgeville Sunday which resulted in the death of Herman P. Oilber, a Freeport real estate broker, and the injury of Henry W. Sharp, the pilot, appeared likely when Merrill Thompson, chief of the local federal airplane inspection service, announced today that he had telegraphed to Washington to obtain authority to make an inquiry.

Mr. Thompson said his information concerning the accident was limited, but that from his knowledge of the plane, a Curtiss JN4, he considered it likely that the pilot, in attempting to land, sought to bring the plane down too slowly and put it in a nose dive.

## THE DEPARTMENT OF THE INTERIOR

**The General Land Office.**—In twenty-five states and Alaska<sup>4</sup> the federal government maintains ninety-four district offices of the General Land Office. The office furnishes information to settlers regarding unoccupied lands, records tracts, receives applications and payments for lands, and conducts hearings in cases involving rival claims to land. In each office is a Register and a Receiver. They furnish information to newspapers in connection with the sale of timber and mineral lands which have been reserved by the government.

## THE CIVIL SERVICE COMMISSION

The United States Civil Service Commission maintains an office in every Federal Building of importance. A Secretary or an Examiner is in charge who makes announcements in regard to vacancies in the government service. Although many newspapers regard publication of these announcements as free publicity, it is, nevertheless, a public service.

Various positions in the United States government service are to be filled by civil service examinations, William B. Doan, secretary of the local board of civil service examiners, announced today. Applicants are sought for the following positions: supervising architects and engineers; stenographers; metallurgists; explosives technologists; agricultural economists; trained nurses for Panama Canal service.

## OFFICIALS OF THE FEDERAL COURT

In every Federal Building are one or more court rooms. Always one of them, and in some districts more than one of them, is reserved for sessions of the United States District Court.<sup>5</sup> Usually a smaller room is reserved for hearings before the

<sup>4</sup> Alabama, Arizona, Arkansas, California, Colorado, Florida, Idaho, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming.

<sup>5</sup> In sixteen different cities the United States Circuit Court of Appeals sits in the Federal Building. Its work is discussed in Chaps. II and VI.

Referee in Bankruptcy, the United States commissioners, and the Standing Master in Chancery. The chambers of the Judge, or judges, are usually near the main court room.

The United States is divided into eighty-three judicial districts. There is no uniformity of division, some states being divided into as many as three districts, and some states comprising a single district. When a state contains more than one district the districts are officially known as *eastern*, *western*, *southern*, *northern*, and *middle* districts. Most districts have one Judge, but some have more than one,<sup>6</sup> and in a few instances a single Judge presides over more than one district. A District Judge is appointed by the President for life or during his good behavior. Except in metropolitan areas, court is held at two or three places in each district, and ordinarily two different terms are held each year in the largest city in the district.

Three or more officers of the court are appointed by the Judge to assist him in a judiciary capacity. The Referee in Bankruptcy exercises both a judicial and an administrative function in dealing with all petitions of bankruptcy under the federal statutes. He performs most of his work in his office but also holds hearings in the Federal Building. He is empowered to compel attendance at his hearings, to compel the production of records, and to issue rules to show cause. His decisions are reviewable by the District Judge who must sign the certificate of discharge from bankruptcy.

The Standing Master in Chancery<sup>7</sup> is a judicial official appointed by the Judge to hear testimony in cases preliminary to final adjudication and to make reports to the Judge on his findings. His services are utilized in private litigations which require voluminous testimony. The Judge frequently appoints special masters in connection with some complex suits.

The United States Commissioner is a sort of federal Justice of the Peace. Usually the Judge appoints half a dozen commissioners in each district, who reside at various places in the district and serve for four years. The commissioners issue warrants of arrest for offenses against the United States, ad-

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<sup>6</sup> The southern district of New York has five judges.

<sup>7</sup> See p. 139.



minister oaths, hold preliminary hearings, determine bail bond, and draw bond for a criminal defendant. They are provided with a seal and receive compensation from the fees they collect. The decisions of United States commissioners are not final, but they may remand prisoners to jail pending trial in District Court or the action of the grand jury. Commissioners are quite active now as the result of the prohibition laws and they are frequently aroused from bed late at night by federal officers. Ordinarily the Commissioner is a practicing attorney who does not have an office in the Federal Building, but carries his seal and official blanks in a brief case to the court room.

The Federal Jury Commissioner, together with the Clerk of the District Court, makes up the jury list for trials in federal court. He is appointed by the Judge and is of the opposite political party to the Clerk. He and the Clerk drop the names of the veniremen into the jury wheel alternately until they have provided about 300 prospective jurors for a term of court.

The Clerk of the District Court is appointed for four years by the Judge with the approval of the Attorney General. His duties consist of making records of documents which are required to be filed in his offices, preparing the dockets for the cases in court, attending court for the purpose of making the necessary minutes on the records, making out all papers necessary to evidence the action of the court—such as writs of execution—and receiving the returns of marshals on writs served by them. He is also custodian of the funds paid into the registry of the court to await determination as to their final disposition, such as money derived from the sale of confiscated goods and from fines. In large cities his office has, in addition to the general office, a department of bankruptcy, a records department, and a citizenship department. All applications for passports not made directly to Washington or to branch offices of the State Department at Chicago or San Francisco are made to the Clerk.

Newspaper reporters have access to the petitions of bankruptcy, pleadings filed in lawsuits, and nearly all other papers filed at the Clerk's office. Copies of decisions in connection with suits appealed to the Circuit Court of Appeals or the Supreme Court are always sent to the Clerk of the District Court by

the Clerk of the higher court, and may be read by newspaper reporters.

Other officers of the federal court are the Bailiff, the Crier, and the Interpreter. The Bailiff and Crier are quite frequently deputy marshals, and the Interpreter is usually an attorney who speaks foreign languages and who is called upon from time to time to aid the court.

#### HEARINGS OF COMMISSIONS

From time to time members of some of the independent executive establishments of the national government hold public hearings in various cities throughout the country. The hearings are held outside of Washington for the convenience of the regions affected. The executive establishments which most frequently hold public hearings outside of Washington are the *Federal Trade Commission*, which investigates alleged actions in restraint of trade; the *Interstate Commerce Commission*, which regulates the common carriers engaged in interstate business; and the *Board of Tax Appeals*, which reviews rulings of the Treasury Department in tax matters. The hearings are usually held in the Federal Building and are usually presided over by a federal Trial Examiner. Sometimes the hearings are held in a single city in a region whose interests are affected, and sometimes a series of hearings are held in various cities, as when the *Federal Trade Commission* in 1926 and 1927 held successive hearings in Boston, Chicago, Chattanooga, New York, and other cities in connection with an alleged conspiracy in restraint of trade by certain associations of publishers and advertising agencies.

Typical of most of the hearings of the *Federal Trade Commission* held outside of Washington is the following:

Representatives of several department stores and furniture retailers yesterday testified before the federal trade commission investigating alleged misbranding of furniture by twenty-seven Grand Rapids manufacturers and jobbers. The dealers asserted that they followed the manufacturers' descriptions in their advertising copy.

Admitting that the advertisements did not generally and correctly state the articles, the witnesses attributed this fact to the improper labeling of the manufacturers and jobbers.

The hearing is being conducted by Trial Examiner John W. Addison, of Washington. Attorney James M. Brinson of Washington is representing the federal trade commission.

Complaints against the twenty-seven concerns allege that they are violating nine rules of the commission passed in 1926 holding that qualifying words must be used to describe furniture of certain makes. The hearings have been in progress since May 2, and sessions have been held in twelve cities.

Hearings conducted by the Interstate Commerce Commission most frequently deal with the making of freight rates, a matter of vital commercial importance to the regions and industries affected by the rates, and to consumers of commodities. News about these hearings is of great interest to thousands of readers. The Commission holds hearings, also, in connection with proposed mergers of railways, and valuations of railroad property.

Reduction of freight rates on eggs, poultry, and butter was asked of the interstate commerce commission at a hearing here today before Chief Examiner Ulysses S. Butler.

Harrison F. Jones, executive secretary to the National Poultry, Butter and Egg Association, and W. M. O'Keefe, vice president of the Live Poultry and Dairy Shippers' Association, filed the complaint.

Present rates from the Missouri river to Chicago are 70 cents a hundred and the complainants ask a rate of 67½ cents. From the Missouri river to New York the present rate is \$1.63, and a rate of \$1.32 is asked.

Similar reductions are sought in the rates from all points in Missouri, Kansas, Nebraska, North Dakota, South Dakota, Iowa, Minnesota, and Wisconsin, to Chicago and to eastern cities.

The Board of Tax Appeals, created by the Revenue Act of 1926, is technically an administrative board, but it operates practically as a court. It consists of sixteen members, one of

whom presides over the hearings held in various cities. The Board's review of the rulings of the Treasury Department in the matter of taxes has superseded to a considerable extent the former practice of requiring a taxpayer to pay a tax under protest and then sue to recover it. Although it is an executive board, it assumes the independent and impartial position of a court. The hearing which has attracted the most attention was the one held in Detroit in 1927 in which Senator James Couzens and other former stockholders of the Ford Motor Company alleged that the Treasury Department estimate of the income tax resulting from the sale of stock to Henry Ford was excessive in the amount of \$30,000,000. The hearings are of great public interest, for they frequently furnish the investing public with information as to the value of certain well-known securities.

Hearings on appeals from governmental orders on income tax payments were begun yesterday at the federal building by representatives of the United States Board of Tax Appeals. Only one case was argued yesterday, the rest of the time being taken up in assigning dates for individual hearings.

Attorney Fulton Barry, counsel for the estate of Stuart Valentine, objected to taxes on payments to Mr. Valentine before his death by the LeCompte museum and the Conwell library.

Barry said that Mr. Valentine had given 500 shares of the Murphy & Truax Rail Company, of a par value of \$50,000, to both the LeCompte museum and the Conwell library, and on another occasion had given \$100,000 in Liberty bonds to the museum and an equal amount to the library.

In consideration of these gifts, the institutions were to give Mr. Valentine an annuity in the amount of the dividends, the attorney said. It is the attorney's contention that no tax should be paid on the annuities. Time was granted both sides in which to file briefs.

#### RELATIONS WITH FEDERAL EMPLOYEES

The appointive officials who have offices in the Federal Building are party politicians. Some of them come from small towns

and, when first appointed, are not accustomed to dealing with newspaper men. Most of the appointive officials, however, are helpful and friendly. Also, they make frequent trips to other parts of the state and to Washington and are in close touch with political developments. The Federal Building reporter can frequently obtain from them information which is valuable as political news or as political "dope." A great many political correspondents and editorial writers began their careers as Federal Building reporters.

In a limited sense, the Federal Building houses a political machine quite like the machine in the City Hall, the Court House, and the State Capitol. Every federal officeholder, except the civil service employes, is appointed by the President on recommendation of the persons who distribute federal patronage in each district, usually a United States Senator or Congressman. Even the federal District Judge is sometimes a part of the machine although his own appointment is for life or during good behavior. In a federal Judge is vested the appointment of a Referee in Bankruptcy, numerous United States commissioners, the Standing Master in Chancery, and the Court Clerk. Although federal judges abstain from politics after they have taken the oath of office, the negotiations preliminary to their appointment are sometimes matters of political bargaining. The result is that sometimes—but not often—mediocre attorneys are appointed as judges in the federal courts.

The subordinate employes in the Federal Building are ordinarily civil service employes. They have nothing to gain by being friendly with the newspapers, so reporters must be friendly and tactful in order to obtain their coöperation. Recently the federal employes in each city organized themselves into local organizations. The chief purpose of the organization is to secure coördination among the various offices and consequently a reduction in the expense of governmental administration. The local association holds local meetings and, since it is a civic and occupational unit of the city, often produces some news.

The Federal Building reporter frequently finds that his searchings for news cross the tracks of the newspaper's Washington correspondent and the Washington bureaus of the press

associations. He should therefore watch the news dispatches closely for Washington news that has a local significance.

The reporter who desires to become a Washington correspondent can obtain excellent training by covering the Federal Building run. The ambitious reporter will make an intensive study of national administration. He can acquire a great deal of valuable information by talking to federal officials concerning their powers and duties, by reading the statutory regulations that define the duties and powers of the various officials, and by examining departmental reports that are made available to the officials.

### EXERCISES

1. Make a chart of the officials who ordinarily have offices in the Federal Building, listing their activities and the kinds of news stories they furnish.
2. If, one day on your news run in the Federal Building, you had time for interviewing only three officials, which three would you visit? Why?
3. If you heard a rumor late at night that an unknown man had been arrested on a charge of smuggling jewelry, which of the federal officials would you telephone first? If you could not locate him, which official would you call next? Next? Next? Next?
4. In the *United States Revised Statutes* read the section which defines the duties of the Federal Radio Commission, and make an abstract of the statute.
5. Compare the duties of a State's Attorney with those of a United States District Attorney.

## CHAPTER IX

### THE CITY HALL

THE newspaper reporter who covers all of the affairs of municipal business will find himself attending meetings of different bodies held in different chambers and offices of the City Hall. At least once a week he will attend the regular meeting of the City Council and sometimes, in addition, a special meeting; at least once a month he will attend regular meetings of such bodies as the Police and Fire Commission, the Board of Water Commissioners, the Planning and Zoning Commission, and special meetings of the various committees of the City Council. The remainder of the reporter's time will be devoted to visiting the offices of the various administrative officials, such as the Mayor, the City Treasurer, the City Auditor, the City Engineer, the City Attorney, the Building Commissioner, and many others. In large cities a single reporter cannot, of course, cover all of the affairs of municipal government, especially those that are not conducted directly from the City Hall. One or more police reporters, for example, are especially assigned to cover the police and fire stations; other reporters ordinarily attend meetings of the Board of Education and keep in touch with school officials; and another reporter usually attends sessions of the Municipal Court.

The City Hall reporter on an important newspaper visits each office in the building every day. But he does not merely "gather news." He concentrates on studying and writing about the important facts of municipal administration, that is, the decisions and debates in the City Council and the plans, projects, and activities of the important administrative officials.

In many respects, the City Hall reporter has the most important position on the newspaper staff. The affairs of city government are of vital concern to the residents of a city, and

the modern newspaper, now that cities have grown so large, is a sort of community center. It is the newspaper which provides the inarticulate city man with a picture of the social milieu in which he lives, and it is the newspaper which explains to him the significance of the public affairs that affect him individually and socially. It is the newspaper which tells the citizen what the tax rate will be this year; whether the assessed valuation of property is likely to be raised or lowered; whether public utility and toll bridge rates are too high; whether police protection is adequate; whether the sewerage system is adequate; whether the water supply is sanitary; whether bond issues are necessary for the dredging of lakes and rivers and the construction of viaducts, bridges, boulevards, wharves, and school buildings; whether traffic regulations ought to be modified; whether franchises are to be granted or extended to certain public utilities; whether the public officials are honest; and whether election methods are fair.

The City Hall reporter, in order to understand these problems of city government and to make them understandable to the inarticulate citizen, must have a wide acquaintance among the city's political, civic, and business leaders, and must possess a thorough knowledge of many of the principles of administrative law, accounting, engineering, public finance, practical politics, and sociology. He applies his knowledge to a study of the various problems whenever they emerge into the realm of public discussion and analyzes and explains them for the newspaper readers. Because City Hall reporters possess such a practical knowledge of the affairs that most vitally concern the community they are ordinarily advanced to the highest editorial positions on the paper. Some of them, however, prefer to continue as City Hall reporters but are usually permitted a great deal of freedom in their work; they are also frequently called into counsel with the chief editorial executives to discuss matters of editorial policy.

**The Government of a Small Town.**—In order to understand the structure of city government and the separation of function in the various departments, we shall take a bird's-eye view of the simplest form of city government—that in a city of



about 5,000 inhabitants. In the first place, a city government is a public corporation chartered by the state legislature. It is permitted to perform only the functions sanctioned by the charter. The chief functions are those of providing public streets, lights, health, safety, and education. In order to perform these functions the city is permitted to levy and collect taxes and to borrow money. The performance of these public functions is entrusted to certain officials elected to represent the citizens. There have been instances in city government in which the elected officials so squandered the public money that the cities were compelled to discontinue some of the functions for which the municipal government was incorporated; for example, they were compelled to discharge the policemen and firemen and to allow the street lighting system to cease operation. The whole problem of city government, therefore, is how to provide the best advantages of municipal government at the lowest cost to the citizen.

The government of a city of 5,000 persons is ordinarily entrusted to an elected Mayor and a Board of Council, who appoint certain subordinate officials. The Mayor and the councilmen give only a part of their time to city government. The Mayor presides over the Council and usually casts a vote. Members of the Council are appointed on committees which supervise rather closely the different departments of administration. At every meeting of the Council the chairmen of the various committees make reports concerning the administrative functions which they supervise. The chief committees are those on Streets, Finance, Lights, Sewers, and Public Safety. The business of the whole Council, in its regular sessions, ordinarily has to do with such matters as discharging a policeman, fixing the tax rate, purchasing material and equipment, and approving expenditures; at times the Council discusses the issuance of bonds for certain purposes, the levying of special assessments, or the renewing of a public utility franchise.

*A Council Meeting.*—Here is a picture of a biweekly council meeting in a city of 25,000 inhabitants which, although not quite typical, illustrates the method of city government.

The Mayor called for the report of standing committees.

The chairman of the Committee on Streets reported on the progress of construction of a newly opened street in an "addition" and on the repair of certain other streets. In order to make certain points clear he asked the City Engineer, who was present, to give technical advice to the Council as to the cost of a culvert. Next the Council, on the recommendation of the chairman of the Committee on Streets, instructed the City Engineer to repair the track zone of the interurban railway company in the 700 block on Markham street and to charge the cost to the company.

After the chairman of the Committee on Sewers announced that he had nothing to report, the chairman of the Finance Committee submitted the city's monthly pay roll, which was approved by the Council. The chairman of the Finance Committee next presented some large bills of indebtedness which the Council authorized the City Treasurer to pay; then the chairman of the Finance Committee moved that a certain amount of money be transferred from the general fund to the sinking fund for the reason that the amount in the general fund was more than would be needed to pay current expenses for the month. One Councilman expressed doubt as to the legality of the transfer and the City Attorney, who was present, was called upon for an opinion. After this point had been settled, the Council, on the recommendation of the Finance Committee chairman, voted to deny a petitioning citizen exemption from the payment of city taxes.

The other standing committees having nothing to report, the Mayor called for the report of certain city officials. The Chief of Police reported the number of arrests and the amount of money collected in fines and bail-bond forfeitures, and the City Treasurer reported the balance on hand in the general fund.

The Mayor then called for the third reading of an ordinance relating to the construction of buildings to be used as motion picture theatres. A vote was taken of the "ayes" and "noes," the City Clerk calling the roll. After the vote was announced, petitions relating to the establishment of a municipal art gallery and the location of a municipal boathouse were presented to the Council by private citizens, some of whom addressed the

Council. A petition requesting the Council to donate \$3,000 for the maintenance of a semipublic hospital was referred to the Finance Committee, and the request of a real estate broker for payment of the remaining \$5,000, due for a public school site was referred to the Finance Committee.

No other business coming before the Council, the body went into executive session to discuss the matter of renewing the franchise of the local electric light and power company at its expiration four months hence. The private citizens and newspaper reporters retired from the council chamber, leaving present only the members of the Council, the Mayor, the City Attorney, and a consulting engineer whom the city had specially retained. A minority group in the Council favored constructing a municipally owned electric plant and refusing a renewal of the franchise to the private company. For more than an hour the discussion proceeded, the points in discussion concerning rates, physical valuation of the present plant, and the probable condition of the bond market seven or eight months hence. After adjournment each of the newspaper reporters talked to one or more "friendly" members of the Council and learned about as much about the discussion held in executive session as if it had been open to the public and the press.

*Administration in the Small Town.*—Appointed or elected to help the Mayor and councilmen in a small town are a few full-time or part-time administrative officials. Ordinarily, there is a City Clerk to keep the minutes of the Council, to attend to the correspondence of the Council, and to issue licenses and building permits. A City Treasurer ordinarily makes up the tax roll, collects the taxes, keeps the fiscal accounts, and disburses the city's money. A City Engineer supervises the construction and repair of streets and sewers. A City Attorney advises the municipal officials on legal matters, represents the city in lawsuits, drafts important ordinances, and prosecutes misdemeanants in the police court. A half dozen policemen and firemen act to preserve public safety and public morals.

The character of city government throughout the United States, including that of the largest cities, is quite like the government of the small town. The small-town character of gov-

type of councilmanic government operates, that is, wherever the Mayor has the power of appointment and removal and is subject to less interference in his supervision and administration, government is ordinarily more efficient.

In discussing the government of small towns, we noted that control was in the hands of the Council, the Mayor, and three or four other officers. Under the councilmanic plan in large cities, this same structure of government is in operation except that many cities, in addition to these officers, have separate boards to supervise certain affairs. These boards usually are the Board of Water Commissioners, the Board of Public Safety (or Board of Police and Fire Commissioners), the Park Board, the City Planning and Zoning Commission, the Board of Health, the Board of Education, the Board of Public Welfare, the Board of Cemetery Trustees, the Trustees of the Sinking Fund, the Board of Public Works (or Board of Local Improvements), and the Rivers and Lakes Commission. These boards hold meetings separately from those of the Council; in some instances, in order that coördination with the City Council may be obtained, one member of the City Council is appointed an *ex officio* member of these boards. A few of the boards are distinctly semiofficial bodies which advise with the legally elected officials of the city government but are not subject to their commands. Examples are the City Planning Commission, the Board of Health, the Rivers and Lakes Commission, and the Board of Public Welfare.

Under the commission form of government about five commissioners (in some cities three, in others seven) are usually elected from the city at large, and each Commissioner assumes charge of a particular division of administration, such as public safety, public works, public welfare, finance, or law. The commissioners elect one of their number as the Mayor. In addition to their administrative duties, the five commissioners sit as a legislative body, taking the place of the Board of Councilmen or Aldermen. The chief advantage of the plan is that it merges legislative and executive functions in a small group and provides centralized control of administration. About five hundred cities have adopted the commission plan, but nearly two

hundred have since abandoned it in favor of the city-manager plan.<sup>2</sup>

The city-manager plan resembles both the councilmanic and the commission plans. Usually five commissioners or councilmen are elected by the voters and they, in turn, appoint a City Manager to carry out their decisions. In general, the commissioners or councilmen perform all the legislative duties of city government and lay down broad policies for the City Manager to carry out. The plan works quite like the system of control in private corporations in which a board of directors appoints a president or general manager, and quite like the administration of the public school system in which the Board of Education elects a Superintendent of Schools to perform executive duties and to advise with the Board. About three hundred and fifty city governments operate under the city-manager plan.<sup>3</sup>

**Municipal Legislation.**—The state and federal governments make most of the laws under which we live, but a large proportion of the laws which govern traffic, prescribe building and sanitary regulations, and prohibit misdemeanors are made by *municipal lawmaking bodies*. A few of the laws and regulations made by a city government have their counterparts in the state statutes, but the city government is permitted to make no law that is contrary to the charter granted by the state legislature, or which is in conflict with a state or federal law. The lawmaking body of a municipality is the City Council or Commission; under the commission plan, however, the Commission both legislates and administers.

The laws, or rather the regulations, passed by a city legislative body are usually referred to as *ordinances*. Some of them, however, are called *resolutions*. Ordinances are frequently a long series of articles, sections, and subsections which lay down

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<sup>2</sup> Some of the larger cities which have a commission plan are. Buffalo, N. Y., Newark, N. J., Jersey City, N. J., Trenton, N. J., San Antonio, Tex., Dallas, Tex., Houston, Tex., Fort Worth, Tex., Reading, Pa., New Orleans, La., Portland, Ore., Birmingham, Ala., Memphis, Tenn., Kansas City, Kans., St. Paul, Minn., Oakland, Calif., Des Moines, Iowa; Salt Lake City, Utah.

<sup>3</sup> Some of the large cities which have a city-manager plan of government are: Cincinnati, O., Cleveland, O., Dayton, O., Rochester, N. Y., Kansas City, Mo., Norfolk, Va., Grand Rapids, Mich. The city-manager plan is most popular in cities of less than 100,000 population.

a specific code of rules for some purpose; for example, ordinances are passed to provide a complete code of building regulations, to provide a complete system of zoning and city planning, or to provide a complete set of regulations relating to milk inspection. Ordinances usually require three readings before passage. Resolutions are less important regulations which are more or less ephemeral and particular in their application; they embody the opinion of the Council in regard to some proposal or they censure some body or person. Most of the important agreements that the city government executes are put into the form of ordinances; for example, street railway franchises are granted by ordinance, regulations governing the various administrative departments of the municipal government are enacted by ordinance, and annexations to the city of adjoining territory is done by ordinance.

Indeed, since the City Council exercises supervision over administration, it is difficult to draw a line of demarcation between ordinances which are in the nature of laws and ordinances which are in the nature of administrative orders. In examining the particular functions of the City Council, therefore, no attempt is made in this section to distinguish between legislative acts and administrative orders. Briefly, the legislative and administrative functions of the City Council are as follows:

1. Appointment of all officials and employes not elected by the voters and not subject to appointment by the municipal Civil Service Commission or department heads.
2. Removal of officials and employes.
3. Enactment of an annual budget, which establishes a rate of taxation and authorizes departmental appropriations.
4. Authorization of special appropriations, such as an appropriation for a new fire truck.
5. Authorization of the transfer of the city's money from one fund to another.
6. Enactment of ordinances requiring licenses for certain businesses, occupations, and amusement enterprises; for example, barber shops, peddling, and street carnivals respectively.
7. Authorization of the construction of certain public improvements, and approval of the plans, specifications, and letting of contracts for public improvements.
8. Hearing appeals from the Board of Equalization, or what-

ever the body is called which hears the complaints of citizens regarding the assessed valuation of their property.

9. *Hearing appeals from the various other boards and commissions, such as the Zoning Commission.*

10. *Granting franchises to public utilities.*

11. *Taking action in connection with the indebtedness of the city, such as submitting, by resolution or ordinance, a proposal of a bond issue to the electorate, borrowing money on city warrants, redeeming paid-off bonds and warrants, establishing and controlling sinking funds in connection with the issuance of bonds.*

12. *Providing for annexation of territory to the city.*

13. *Making donations to institutions, such as semipublic hospitals and charitable and eleemosynary institutions.*

14. *Enacting administrative regulations for departments and approving the reports of city officers.*

15. *Approving the surety bonds required of all city officials.*

16. *Enacting police and sanitary regulations.*

Although a great many important acts of a City Council are done by ordinance, the Council, when it sits, resembles a board of directors more than a legislative assembly: measures are discussed rather than debated. The Council committees, also, do not function quite like the committees in state and national law-making bodies.

The number of standing committees varies in different cities, ranging all the way from one committee in the Detroit Council to twenty-one committees in the Providence Council. The average number is probably twelve or fourteen. The names of the standing committees are quite different in various cities.

The names of the committees of the Chicago Council, for example, are: finance; local transportation; local industries; streets and alleys; railway terminals, judiciary, and special assessment; schools, fire, and civil service; harbors, wharves, and bridges; public health; track elevation; police and municipal institutions; efficiency, economy, and rehabilitation; city planning, parks, and athletics.

The committees of the City Council of Madison, Wisconsin, are: city property; city markets; claims; finance; fire and water; judiciary; licenses; Olin Park; ordinances; police; printing; supplies; sewage disposal.

**Reporting Council Meetings.**—Obviously, the reporter who attended the meeting of the small-town Council described on

page 230 would not report every transaction of the Council but would select those affairs which were of most interest and significance to the reader. He would not, for example, make any notes of the report relating to the city government's pay roll, the transfer of money from the general fund to the sinking fund, the exemptions from tax payment, or the balance in the city treasury, unless some fact of unusual interest were connected with these actions. Ordinarily, too, the report as to the number of arrests by police officers and the amount paid in fines is of routine interest, and would not be of especial interest unless the reporter made comparisons with previous reports to show that arrests and fines had diminished or increased in great measure. The actions taken on appeals from the Zoning Commission would probably not be of interest unless they indicated a certain tendency of the Council to emasculate its zoning ordinance by making frequent exceptions to its rules, perhaps in the interests of certain real estate operators. The announcement of the opening of the new street and the repairing of the track zone would be of interest to a particular group of readers, but not of general interest. The petitions relating to the establishment of a municipal art gallery and to the location of a municipal boathouse would probably be of interest to a large number of readers, and the facts concerning them could be obtained by the reporter partially from the petitions presented to the Council and partially from the persons presenting the petitions.

The principal news story which developed at this particular meeting would either relate to the action taken in the executive session in regard to the renewal of the light and power franchise or the passage of the motion picture theatre ordinance. The reporter would find complete data on the motion picture ordinance embodied in the text of the ordinance. The action and arguments which took place in the executive session in regard to the light and power franchise might or might not be of much interest, depending upon the decision reached or the probable decision indicated by the discussion. Perhaps the fact would be brought out in the discussion by the consulting engineer that the light and power rates in the city were excessive as compared with rates in neighboring cities, or that the physical valuation of



the light and power plant claimed by the utility company was higher than a careful inventory had revealed; perhaps one member of the Council accused another member of being secretly in the pay of the local light and power company; perhaps the majority of the councilmen, convinced by the statistics concerning rates and valuation, instructed the consulting engineer to prepare tentative plans and specifications for a municipally owned light and power plant, with a view to submitting the question to a popular referendum; perhaps in the face of this decision an opponent of the plan pointed out that the uncertain condition of the bond market would not permit the city to borrow money at reasonable rates for the construction of a plant for a considerable length of time; perhaps another Councilman pointed out that the city government had already reached the limit of bonded indebtedness permitted by the state government; perhaps another opponent suggested the appointment of a committee to confer with the local utility company in an effort to have the rates reduced. Any or all of these facts might be brought out in the discussion and they ought to be reported intelligently by the reporter.

In writing about municipal legislation the reporter will find that many news stories continue over a period of several weeks. In connection with some very important legislation which involves policy, such as the renewal of public utility franchises, a story may run for a year or for several years. The reporter, of course, should become thoroughly familiar with all the questions at issue and should dig beneath the surface to learn what influences are at work on each side of an important question of policy. He should not only be thoroughly acquainted with the different interest-groups in a city and with the motives of the leaders, but he should study the question from an academic standpoint. He should obtain copies of the particular draft ordinances and of statistics bearing upon the particular projects. In writing the news stories he should explain thoroughly the points at issue, point out the influences at work, and identify the leaders. Merely to chronicle a sharp dispute between two councilmen is not sufficient explanation of the issue or sufficient answer to the questions which arise in the reader's mind.

Municipalities are great schools of democracy in which citizens are training themselves in self-government to cope with the problems of the present and the future. Self-government cannot survive in a community in which only the "insiders" comprehend the significance of the forces at work. It is plainly within the intelligence of the ordinary citizen to comprehend the problems of municipal government provided his newspaper sifts and resolves the issues for him. But the newspaper cannot creditably perform the rôle of community center unless the City Hall reporter is intelligent and industrious.\*

## (1)

The city council yesterday passed to third reading an ordinance providing for the vacation of Terry and Root street ends to make way for the construction of the \$500,000 public market building.

The motion to pass the ordinance to third reading encountered vigorous objection from two councilmen until an amendment was adopted which assures the early construction of the market building.

Councilman Herbert Mann suggested the city have some assurance that the market building would be constructed and that the streets would not be vacated merely to increase the value of the ground for some other purpose.

*The amendment provides that construction of the building will start within six months after the ordinance becomes effective and must be completed within a "reasonable time."*

It is expected that the ordinance will receive final approval at the council meeting on March 7 and will become effective April 6

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\*"The strength of Tammany lies primarily in one thing—in the private ownership of public utilities. Tammany's ability to win, to stay, or to come back after defeat depends and has always depended upon the support of those powerful interests who own and operate our city utilities and who must control the city government and even the legislature in order to safeguard their monopolies. In return for prompt financial backing on a large scale, Tammany gives to the gas, electricity, and transportation monopolist the balance of power in the Public Service Commission, the Department of Water Supply, Gas, and Electricity, and the Board of Estimate and Apportionment. In short, Tammany furnishes private capital with the opportunity to exploit the average man, and private capital furnishes Tammany with the wherewithal to deliver the goods"—Amos Pinchot in an open letter. Cited by Maxey, *Readings in Municipal Government*, pp. 157-158.

## (2)

The city government will spend \$4,168,000 in 1928. The budget was finally approved yesterday by the city council.

It is divided as follows:

General fund .....	\$1,170,000
Schools .....	1,900,000
Public library .....	75,000
Fire pension fund .....	18,000
Police pension fund .....	32,000
Sinking fund .....	327,000
Water works fund .....	646,000

The only increases are those in the school budget and the water works fund, \$70,000 more being added to the school budget, and \$300,000 to the water works fund. The increase in the water works fund was necessary because of the damage resulting from the spring flood and the failure of the voters to approve a bond issue to take care of the necessary repairs.

The budget was approved without a dissenting vote. Alderman Harry S. Huggins, chairman of the finance committee, explained that the finance committee had turned down requests for new activities, salary increases, and other expenses aggregating \$20,000. Some of these, he explained, will go into a supplemental budget, to be submitted next month after it has been determined whether they will be warranted by increased tax receipts.

## (3)

The ordinance proposing the change in classification of property on Traylor street between Ninth street and Tenth street from "light industrial" to "heavy industrial" was rejected by the city council yesterday after Alderman Hugo Farrell vigorously opposed the change.

Action of the council in refusing to change the zoning ordinance as it applies to this block was looked upon as a death knell to future requests for changes in the existing zones.

M. E. Jefferson and Otto Kunz, representing about twenty per cent of the property in the immediate neighborhood of this block, appeared before the council and opposed the change which was requested in order to permit the Oxas Oil company to install oil storage tanks on a vacant lot in the block.

Alderman Farrell told the members of the council that if they passed the ordinance they would be destroying the value of dwelling property.

"Any motion to defer action on this ordinance is merely a scheme to mislead us," he said. "I hope that the council will take final action on this ordinance today and make it apparent that the zoning ordinance cannot be continually emasculated in the interest of private parties."

This declaration was made after Alderman J. J. Kremer had moved that the proposed ordinance be indefinitely postponed, and Alderman H. P. Adams had offered an amendment that the proposed change affect only the one vacant lot in the block. Both the motion to defer and the amendment were defeated by acclamation.

Alderman A. H. Burrus said that the storage tanks are not an asset to the property in the neighborhood.

"People buy homes there, hoping that the district will remain as it is now zoned," he said. "If it is changed, they will soon feel that there is no benefit in zoning a city. I oppose the change."

**Municipal Administration.**—The administration of city government is ordinarily divided into nine separate functions, but in many cities these functions are combined into less than nine different departments of administration. The functions are: (1) public safety; (2) finance; (3) public works; (4) public health and welfare; (5) law; (6) courts; (7) public utilities; (8) education; (9) planning and zoning; (10) civil service.

**Public Safety.**—The supervision of the police and fire departments is ordinarily vested in a Board of Public Safety or a Board of Police and Fire Commissioners; under the commission form of government the work is entrusted to the Commissioner of Public Safety. The Board (or Commissioner) appoints uniformed officers, ordinarily called chiefs, to conduct the routine affairs of the police and fire departments.<sup>5</sup>

The Board of Public Safety holds weekly or biweekly meetings during which it hears appeals in matters of departmental

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<sup>5</sup> A more complete description of the police department is contained in Chap. X.

discipline, approves promotions, conducts hearings of charges against policemen and firemen with a view to discharging or reprimanding them, discusses proposed increases or reductions in the personnel of the departments, acts upon matters in connection with the pensioning of firemen and policemen, discusses the purchase of new equipment, and deals with all matters concerning the fire and police departments over which the chiefs do not have complete authority.

Patrolman Floyd Lamb was suspended from the police force for fifteen days by the police and fire commission at its meeting yesterday afternoon, following charges filed by Chief Caleb Wilkins that Lamb was found asleep in a Chestnut street restaurant last Wednesday night while on active duty.

Chief Wilkins asserted that witnesses told him that Lamb had been drinking heavily while on duty, but these charges were denied by Lamb and were not substantiated by the testimony of Henry Pitt, a waiter in the restaurant.

An echo of the meeting last week which resulted in the discharge of Philip Duncan, a fireman at the No. 3 Engine House, was heard at the meeting yesterday afternoon when Commissioner T. B. Venholme asked Chief Bradford Miller to require all firemen to wear their badges on their shirts when on duty. Duncan, it is alleged, had been earning money by doing electrical work in the neighborhood of the engine house while he was supposed to have been on duty.

The commissioners, in discussing the traffic situation, decided to request the city council to appropriate funds for the employment of a traffic expert from outside the city to instruct patrolmen in the proper methods of signalling traffic.

Police Chief Wilkins' report showed that his department arraigned 756 persons in court during April, arrested four fugitives from justice, and recovered 80 out of 128 automobiles reported stolen.

Fire Chief Miller reported 398 inspections and 98 re-inspections by the fire inspector during the last month. The department answered 89 alarms, bringing the total for the year to 606, the report said.

*Finance.*—The City Council exercises a closer supervision over finance than over any other department, but the administrative duties are vested in such officers as the Treasurer (or Comptroller) and the Auditor; under the commission plan of government the Commissioner of Finance is in charge of financial administration. Although it is the City Council which plans and adopts the city's budget—that is, determines the tax rate and makes appropriations—the work of assessing property, collecting taxes, and disbursing monies is an administrative task.

In order to eliminate duplication of work, the assessing of city property is frequently performed by the county assessing officials through special arrangements made with the city government; in as much as the property in a city is also assessed for county and state purposes, the valuation found by the county officials can merely be transferred to the city tax rolls. In some cities, however, there is a duplication of effort in assessing.

The City Treasurer (or Comptroller) \* makes up the tax roll and collects the tax money. Ordinarily, he audits the fiscal accounts of the city government, disburses money, and acts as custodian of the money; sometimes, in addition, an Auditor is appointed to perform some of these tasks. The City Hall reporter writes frequent stories based upon the records compiled by the Treasurer and upon interviews with that official, especially in connection with taxes, a subject of personal interest to nearly all citizens.

After a tax roll has been made up from the tax maps and other sources, tax bills are sent to the individual taxpayers. Frequently the taxpayers find reasons for claiming that their property has been assessed at too high a valuation. For the purpose of reviewing assessments a Board of Equalization, or Board of Review, sits for several days after the tax bills have been sent out. Ordinarily, the Board is a body of representative taxpayers appointed by the Mayor or the Council or elected by the voters. The Board has the power to change the assessed valuation of property.<sup>7</sup>

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\* Called the Chamberlain in New York City.

<sup>7</sup> A more complete explanation of the assessment and collection of taxes is contained in Chap. XI.

A city government's revenue is usually derived from some or all of the following sources:

1. Taxes
  - (a) General property taxes
  - (b) Business and occupational taxes
  - (c) License fees
  - (d) Franchise taxes
2. Special assessments made upon owners of abutting property where improvements are made.
3. Fines and forfeitures of bonds.
4. Fees charged by officials in various departments for permits, etc.
5. Sales of products or service of municipally owned enterprises, such as water or transportation.
6. Interest on sinking fund.

The City Treasurer usually has a certain amount of authority in connection with the administration of the city's debt, but sometimes this work is performed by a special Board of Trustees for the sinking fund. In anticipation of collecting taxes, cities borrow money for immediate purposes—such as meeting the pay roll—by issuing warrants. But for the construction of costly public improvements they issue long-term, serial bonds. Money to amortize and redeem the bonded debt and to pay the interest charges on it are derived from the tax revenue, a portion of which is placed in the sinking fund to accumulate interest. Sometimes when the citizens, by ballot, authorize a bond issue they vote simultaneously to approve a special tax to pay off the bonds.

In some cities other officials perform a part of the Treasurer's work, such as issuing licenses. Ordinarily, the City Clerk or a special license clerk is in charge of licenses. In some cities an official called the City Collector or Tax Receiver works under the Treasurer as a collector or receiver of taxes.

Collection of about \$80,000 in delinquent personal property taxes will be started immediately by W. T. Sinclair, city collector. The collector was authorized to act by the finance committee of the City Council following the auditor's report yesterday.

Of the total amount, \$50,000 is delinquent from the tax rolls this year, and \$20,000 is the amount that was not paid last year.

If notices to be sent out this week do not cause the delinquent taxpayers to settle, legal action will ensue, the collector announced today.

It is reported that at least three prominent business men are on the list.

*Public Works.*—The administration of public works is divided among a large number of officers. In most cities the construction and repair of streets, bridges, wharves, viaducts, and other public improvements are supervised by a Board of Public Works under which are certain engineers, inspectors, and superintendents. The details of the Board's work have to do with engineering and therefore are not usually interesting to newspaper readers. But the announcement of plans and specifications and the progress made upon public improvements is of great interest to all citizens.

A proposal that the board of public works obtain the consent of the board of park commissioners to abandon Woodland street as a boulevard and turn it over to the board of public works for widening and resurfacing was made by President W. K. Simonds at the meeting yesterday of the board of public works.

The board of park commissioners, which has authority over all boulevards in the city, can raise money for widening and resurfacing the street only by means of a bond issue, whereas the board of public works has authority to require abutting property owners to bear the expense, President Simonds pointed out.

Commissioner Thomas Huey opposed President Simonds' scheme, asserting that it would open the way to a rezoning of the street by the city plan commission and that its characteristic as a residence district would be endangered and that property values would consequently be lessened.

"We are constantly having a turmoil about our boulevards," Commissioner Huey said. "Real estate and business men seem determined to place one-story storerooms all along our boulevards. If we abandon Woodland street as a boule-



ward it will be quickly rezoned for business and there will be a row of one-story buildings all along the street. The next step will be to allow business to resume the street. So long as we entrust zoning to a city plan commission that is packed with real estate interests there is no chance of making this a beautiful city, except by holding to the boulevards that we have."

President Simonds answered by saying that as soon as the improvement had been made, the street could be turned back to the board of park commissioners for use as a boulevard.

"It is easier to take it away than to turn it back," Mr. Huey replied.

The proposal was laid over until the next meeting, May 4.

The plan, as outlined by President Simonds, is to widen the street seven feet on each side. This is similar to the plan proposed last spring by the board of park commissioners but abandoned after property owners had objected.

The Street Superintendent has charge of the construction and repair of pavements, sidewalks, viaducts, and sewers; he, also, sometimes has charge of street cleaning and garbage collection. The City Engineer is in charge of a staff which designs buildings and other improvements and prepares specifications for their construction. Other officials include the Building Inspector, who issues building permits; the City Electrician; the Gas Meter Inspector; the Plumbing Inspector; and the Inspector of Weights and Measures, sometimes called the City Sealer. Although news concerning the letting of contracts originates in meetings of the City Council, innumerable news stories come out of the offices of the Building Inspector, the City Engineer, the Street Superintendent, and some of the other officials connected with public works. Most cities place the administration of sewage and garbage disposal under the supervision of the Department of Public Works, and some cities have a separate Department of Street Cleaning.

(1)

Approximately \$15,000 worth of damage has been done to creosote wood block pavements in the city during the rainy weather of the past week, accord-

ing to M. M. Hebel, city street superintendent.

Practically all of the wood block pavements in the city have been damaged to some extent, but the greatest loss was suffered in the track zone on East Cornell street, where the blocks have been forced out of place for the entire length of the pavement from North Williamson street, to Monmouth street, the street superintendent said.

Mr. Hebel will recommend that the wood blocks be replaced with paving brick.

(2)

It would cost the city \$450,000 more to operate an incinerator than to renew the contract with Robert Y. Thompson for hauling garbage to his farm on the *Drennon Mills highway*, according to an estimate prepared by City Engineer Emil Jacobs.

City Attorney Randall Blake and Attorney George Pepper, counsel for Mr. Thompson, yesterday drafted a contract which will be submitted to the sewage disposal committee of the council.

If the recommendations of the city engineer are accepted, the contract drafted yesterday will be renewed for fifteen years, the period upon which the city engineer made his calculations.

(3)

Eight building permits, representing a total expenditure of \$201,000, were issued yesterday by Frank Wilson, city building inspector.

The largest single permit was for an \$89,000 apartment building to be erected at 103 Lakeside street by the Doan-Howell Realty company.

(4)

If Oscar Higgins, owner of the ramshackle wooden structure at 814 North Randall street, does not remove inflammable material from the building by Thursday noon, Chester D Kennedy, city fire inspector, will ask the city attorney to issue a warrant for Higgins' arrest, he said today.

The fire inspector on Saturday issued an order to Higgins to remove the inflam-

mable material within 48 hours and to repair or destroy the building within 30 days. The time limit expired this morning.

A city ordinance provides for a fine of \$5 to \$25 a day when orders of the fire inspector are not obeyed, City Attorney Frank A. Edgar explained today.

*Public Health and Welfare.*—A Board of Health, usually appointed by the City Council (or the Commission) has charge of health regulations. The chief executive officer of the board is the City Health Officer. Working under him is a corps of inspectors, nurses, bacteriologists, and chemists. These workers inspect milk and meats at slaughter houses, restaurants, etc.; control nuisances, as by the extermination of flies and mosquitoes; inspect premises; record vital statistics and register birth and death certificates; assume control of communicable diseases; promote child hygiene in schools and maternity hospitals; conduct dispensaries, clinics, and laboratories; and promote public health education. Newspaper readers are greatly interested in their own health and in the public health, and it is not surprising, therefore, to find the name of the City Health Officer in the news almost as frequently as the name of the Mayor.

(1)

Pasteurization of all except certified milk delivered in the city will be required by the city board of health under a new ruling which becomes effective Jan. 1, it was announced today by F. S. Malloy, city health officer.

With the adoption of this ruling, all milk sold in the city will come from tuberculin-tested cows and will be pasteurized, thus giving the city double protection against disease-laden milk.

More than 23,600 quarts of milk were delivered to consumers in the city each day during the past year, Dr. Malloy said. This is an increase of more than 9,000 quarts since 1923.

(2)

The local epidemic of rabies, the worst on record as shown by January statistics, has reached a new danger point, Health

Officer F. S. Malloy said yesterday. The war on stray dogs, he added, will be relentlessly waged for probably a month longer.

During the month ending yesterday, 23 persons were bitten, 11 of whom are now receiving the Pasteur treatment. Out of 32 dogs killed and sent to the state health laboratory for examination, 28 were found to be infected. Approximately 100 dogs which were captured and taken to the city dog pound, have been killed.

The administration of parks and recreation in some cities is grouped with the Department of Health and Welfare, but it is never controlled by the Board of Health. The administration of parks is, as a rule, more closely related to the Department of Public Works than to the Department of Health. Frequently, a Board of Park Commissioners, whose work is quite similar to that of the Board of Public Works, supervises public recreation. The supervision of city charities and eleemosynary institutions is sometimes under separate control but is sometimes combined with the functions of the Department of Health and Welfare.

*Law.*—The chief legal officer of the city government is the City Attorney. He is sometimes called the Corporation Counsel or the City Solicitor when certain of his functions devolve upon a Prosecutor so as to leave him free to perform ministerial functions. In small towns a large part of the City Attorney's work is connected with the prosecution of violations of city ordinances, but in large cities this type of work is almost entirely neglected by the City Attorney. The City Attorney is the chief legal adviser to the City Council and to the various department officials. He advises the members of the city government as to their official rights and duties, drafts important ordinances, and drafts or examines contracts and deeds executed by the city government in connection with public improvements which entail the purchase, sale, or condemnation of property. The work which most frequently brings the City Attorney into public notice is in connection with litigation to which the city is a party. The City Attorney represents the city in all damage actions brought against the city or brought on behalf of the city, and in test suits in connection with utility rates, franchises.

and the sale of bonds. The newspaper reporter comes into frequent contact with the City Attorney whose hand, it seems, is in almost every important policy of the Mayor and the Council.

## (1)

City Attorney Randall Blake has been asked to determine whether the city can levy a  $\frac{3}{4}$  mill tax to advertise the city and a  $\frac{3}{4}$  mill tax to finance industries which may be brought here. The question has been put up to the city attorney by the finance committee of the city council.

The constitutionality of such tax levies will be the chief question before the city attorney, who also has been asked to suggest how far the city might go in financing private industry with public funds. Mr. Blake will make a complete report by Tuesday, he said today.

## (2)

No appeal will be taken by the city from the order of the state railroad commission increasing the street car fares here, it was said at the city hall today.

Both Mayor William Kendrick and City Attorney Randall Blake said that they do not favor an appeal. Both said today that they doubt the city's ability to win a reversal of the order by going to court.

## (3)

The traffic committee of the city council, apparently determined to make an experiment in the matter of a parking ban on the city square, yesterday requested City Attorney Rodney Morris to draft an ordinance which will be submitted to the next meeting of the council. The ordinance would restrain parking on the square for more than five minutes from 9 a.m. to 6 p.m.

*Public Utilities.*—Nearly every city government operates at least one public utility, that is, sells to its citizens a service or a product. Some cities operate electric light and power plants, gas plants, street railways, buses, ferries, wharves, and public markets. The administration of any one of these utilities is so

important that it is frequently placed in the hands of an expert who works in coöperation with the department heads of the city government and the members of the Council. Reporters obtain from these officials almost precisely the same kind of news stories that originate in the offices of the private corporations of similar nature. At the present time the administration of municipal utilities is subject to criticism by private interests, politicians, and dissatisfied citizens and thereby furnishes the basis of controversies in the newspapers.

A utility that nearly every city operates is a waterworks, the water being sold to consumers and, also, held in readiness for use in fighting fires. Ordinarily, a special Board of Water Commissioners supervises the operation of the waterworks, fixes the rates charged consumers, and recommends the construction of new pumping and filtering stations. At the regular meeting of the Board, reporters obtain news stories concerning rates, the amount and purity of the water supply, the water pressure during fires, and the construction of new pumping and filtering stations. In cities having a commission plan of government the operation of the waterworks is usually under the supervision of the Commissioner of Public Utilities. A Superintendent of the Waterworks, who is an engineer, is usually employed as an administrative head regardless of the plan of government.

## (1)

The population of Madison will be 60,000 by the close of 1929, according to an estimate made today by L. A. Smith, superintendent of the city water department.

The population at the close of 1927 is placed between 35,000 and 37,000 by Mr. Smith. His estimate is based upon the number of meters in use.

## (2)

How many times did you splash in the bathtub or get under the shower yesterday in an effort to keep cool? If you didn't use an extra twenty-six gallons of water somebody else consumed your share.

The local per capita water consumption due to the excessive heat jumped from

285 to 311 gallons a day, forcing the pumping station to draw more water from the lake than ever before in a twenty-four hour period—a total of 1,027,000 gallons, Roy C. Barrett, superintendent of the water works, said last night.

In a third of the city Thursday night and yesterday the pressure was so low that faucets were dry in second and third story apartments. It required two extra clerks at the city hall to answer telephone complaints.

Superintendent Barrett appealed to citizens to desist from sprinkling for the next two days in order that the pumping station can provide sufficient pressure for those who need water for more important purposes.

*Education.*—The administration of the public school system is entrusted to a Board of Education, either elected by the voters or appointed by the Mayor or the Council. The Board, in turn, appoints a Superintendent. Except in cities in which the Mayor or Council appoints members of the Board of Education, the administration of public education has little connection with other municipal affairs. The law sometimes provides that the City Council must approve the budget submitted by the Board of Education and turn over to the Board's treasury the taxes collected for educational purposes. The administration of the public schools is of great community interest and many newspapers, consequently, have a reporter who devotes his full time to attending meetings of the Board of Education, interviewing school officials and teachers, and visiting the schools. The nature of school news is well known and needs little description here.

(1)

T. W. Reynolds, superintendent of schools, declared Saturday that the week's survey to determine the number of hungry children in the local schools has proved worthless.

R. G. Webb, director of physical welfare in the schools, concurred in the superintendent's opinion.

Both officials asserted that they knew of no plan by which an efficient survey could be made to determine the number of children whose home conditions

made it impossible for them to obtain sufficient food.

The survey just completed was merely a compilation of data on the number of underweight children in the schools. This fact, however, is no indication of poverty, the superintendent said.

(2)

The board of education yesterday voted to place all teacher-clerks under civil service regulations, classifying them with janitors, sweepers, and window-washers.

The action was taken after Supt. R. E. Schalk had protested and after a delegation of teachers had presented a petition. The vote was 5 to 3.

S. A. Stephenson, a member of the board, declared that the action was a political move calculated to put more "pay-rollers" under the domination of the present city administration.

This action, however, was the first disturbing element in the board's meetings for several months. Prior to the vote, the board had increased Supt. Schalk's salary to \$6,500, had authorized the preparation of specifications for remodeling of the Harrison Junior high school, and had granted leaves of absence to two teachers in the North Side high school. . . .

Some cities maintain municipal universities, libraries, and museums; the administration of these educational agencies is ordinarily entrusted to separate boards which hold regular meetings. Routine news originating in libraries and museums is often of human interest and of educational value.

*The Mayor.*—The Mayor has general supervision over all the administrative activities of the city government and, in addition, exercises a legislative function in the sense that he approves or vetoes ordinances passed by the Council and is instrumental in obtaining the passage of legislative measures. He is the ceremonial head of the city government, and is vested with a considerable power in making appointments to office.

The newspaper reporter interviews the Mayor every day. Usually, the interview concerns general policies of the city government, chiefly those dealing with major local improvements. Because a Mayor is usually given a mandate by the electors to



carry out a particular program, he is always the source of general information; for detailed information, however, the reporter interviews the department heads in the city administration.

## (1)

The city attorney will be asked to prepare an ordinance providing for the extension of Harrison street from East Third street to West Fourteenth street, Mayor Paul M. Fox said today.

When the proposition of approving a bond issue to pay for the extension of Harrison street was defeated two years ago it was assumed that it would not be revived for a few years, and the matter was not an issue in the campaign last spring when Mayor Fox was elected.

The mayor, however, is willing to make the extension of Harrison street one of the major planks in his program of municipal improvements.

Realizing that as the city grows the parking system will become more vexing, Mayor Fox declared today that something must be done to accommodate the cars in the future. If the city continues to grow the next ten years as it has since 1920, the mayor believes that 20,000 more inhabitants will have been added by that time.

Mayor Fox does not urge that the entire project be carried out at once but that only one block be taken at a time. He is firmly convinced that the increased value of business property facing a wide avenue will be greater than the present value so that the increase in taxes will pay for the improvement.

## (2)

A resolution prohibiting all future boxing and wrestling matches at Riverview park auditorium on Memorial day may be presented at the next meeting of the city council, it was said today by Mayor Paul M. Fox.

The local posts of the G. A. R. and the Veterans of Foreign Wars yesterday made an appeal to Mayor Fox to stop the boxing matches which have been scheduled for Memorial day. Mayor Fox is in sympathy with the request of the local veterans.

"If the park board has not already entered into any contract with the promoters of the matches, the bouts will not be permitted," the mayor said. "With the signed contract, however, it will be practically impossible to prevent the bouts without a law suit.

"I do not think this type of exhibition is proper for Memorial day, and the city should not loan its facilities to the promoters. I shall ask the council to prohibit future matches by passage of a resolution."

*Zoning and Planning.*—In recent years many cities have passed ordinances providing for a definite city plan and for zoning restrictions. A commission of private citizens and members of the City Council is sometimes appointed to perform the survey and executive work in connection with designing and executing the city plan. In some cities the City Plan Commission is a separate body from the Zoning Commission.

A zoning ordinance divides the city into "business," "industrial," "residence," and "business-residence" districts, and prohibits, for example, the construction of "business" houses in "residence" districts. The ordinance also regulates the height of buildings, the type of buildings, the "setback" distance from the curb, and the character of building material. A Zoning Commission of private citizens and members of the City Council is ordinarily appointed to execute the provisions of the zoning ordinance, but sometimes a special committee of the City Council is entrusted with the authority. The type of service performed by the Zoning Commission is more quasi-judicial than administrative; that is, the body hears requests of citizens who appeal from the decisions of the Building Inspector. The quasi-judicial decisions of the Zoning Commission may, in turn, be reviewed by the City Council. Because the decisions of the Zoning Commission in permitting exceptions to the provisions of the zoning ordinance may substantially affect property values, the news of their rulings is of importance to citizens. Pressure of real estate interests is sometimes brought to bear upon the Board and it is necessary that newspapers report the Commission's decisions thoroughly. Usually, a Zoning Commission includes an architect, a real estate agent, a lawyer, one

or more members of the City Council, and sometimes the City Engineer.

The zoning commission yesterday voted to change Union boulevard from Tenth street to Thirtieth street from a "residence" district to a "business-residence" district.

The action was taken in the face of protests by residents of the neighborhood affected, one hundred of whom addressed a petition to the commission.

There was no discussion of the matter except in executive session. Immediately after receiving the petition of the citizens, presented by T. T. Tyson, 2345 Union boulevard, the commission excluded newspaper men and others from the room.

A representative of the *Times* inquired of Mayor W. K. Kilpatrick whether, in his opinion, the zoning commission ought to make such an important decision without announcing its reasons and in public session.

"They are doing what they think is for the best interests of the city," the mayor replied.

"Do you favor executive sessions of the commission?" the mayor was asked.

"Not usually," he said. "But there are times when it is in the public interest"

"Ought the zoning commission to be packed with real estate operators, and don't you think it would be better to repeal the zoning ordinance than to permit selfish interests to exploit it for their profits?" the mayor was asked.

"The zoning commission is not 'packed,'" the mayor replied. "Furthermore, it is better to appoint members who have an expert knowledge of the city's future development and of building restrictions than to appoint a mere private citizen."

Before going into executive session, the zoning commission refused the request of the Amalgamated Grocery company to construct a store building in the 1800 block of West Adams street, and directed the building inspector to issue a building permit to Willard Dawkins to construct a two-story brick duplex apartment building at 2100 South Canton street, provided the setback specifications of the zoning ordinance were adhered to.

**Civil Service Commission.**—Many large cities now have civil service commissions which give examinations and certify applicants for positions in the city government. The Commission also has power in many cities to suspend and discharge city employes or to reinstate them when it is appealed to by department heads. In some cities, however, the politicians have obtained possession of the Civil Service Commission and have thus thwarted the purpose that it was designed to serve.

Daniel Nehf, superintendent of the pumping station who was discharged last week on the order of Mayor John Grimm because he is alleged to have placed an excessive quantity of chlorine in the city's water supply, today appealed the decision to the civil service commission. The commission set Tuesday for the hearing.

**Aiding Citizens.**—City government is so complex in the large cities that the inarticulate citizen with a grievance cannot always make his voice heard in the City Hall. To remedy this situation, several newspapers have assigned their City Hall reporters to perform services that the private citizen, in his ignorance of public affairs, cannot accomplish. The City Hall reporter interviews the appropriate officials concerning the citizens' grievances and obtains relief for the citizens. Errors in tax bills, noisy vehicles, insanitary conditions, poor paving, improper water service—these are some of the complaints that citizens carry to the newspapers. The City Hall reporter also renders a service to citizens by merely furnishing them with information about their rights or about the operations of city government that they need to know. For example, "Does the automobile parking law apply to alleys as well as streets?" "When is the alley between Warren avenue and Washington boulevard to be graded and paved?" "What is the penalty for late payment of taxes, and when does it go into effect?" "When does the franchise of the United City Railways expire?"

### EXERCISES

1. What is the limit of bonded indebtedness that your city is permitted to incur?

2. Which is the better of the following leads?
  - (a) The \$400,000 school bond issue was approved by the voters yesterday by an unofficial vote of 2,346 to 1,234.
  - (b) Every school child in Dresden was assured of a seat in the public schools and the school children of the Tenth ward were assured of a safe and sanitary new school building when the voters yesterday approved the \$400,000 school bond issue by a vote of 2,346 to 1,234.
3. List the steps that would have to be taken if the citizens of your city desired to acquire the street railway and place it under municipal operation.
4. Clip from your local newspaper a news story to illustrate each of the legislative and administrative functions of the City Council listed on pages 236 and 237.
5. Obtain from newspapers the budget of your city and that of another city of the same size and compare the various items as to character and amount.
6. Make a list of the sources of the revenue that your city collects at the present time, and compare it with the sources of the revenue collected by the state and federal governments.

## CHAPTER X

### THE POLICE STATION

CRIME stories are published in newspapers both because they often contain the elements of drama requisite to interesting news stories, and because it is necessary that the public be informed of crimes committed against it and of the character of the administration of justice rendered by the responsible officials. Newspapers have been accused for three centuries of furnishing too many and too vivid accounts of crimes,<sup>1</sup> and the charge today is true of several newspapers. Yet a great deal ought to be said in defense of the newspapers. Newspapers do not, for example, carry the excessive amount of crime news that critics allege; measurements of about one hundred representative daily newspapers made by students at the University of Wisconsin show that only about 7 per cent of the news content is related to crime. The fault is not that newspapers carry a great amount of crime news, but that many newspapers give prominent display to crime news out of proportion to its social significance and, in some instances, give to crime news a treatment that produces anti-social effects.

**Police Organization.**—Nearly all news stories that concern crime originate in the police station. A city's police organization is ordinarily administered by a civilian body known as the Board of Public Safety, or Board of Police and Fire Commissioners.<sup>2</sup> The responsible uniformed official is usually known as the Chief of Police. Assisting the Chief are officers known as either inspectors or assistant chiefs. They divide their authority either according to function or according to territorial districts. Their duties usually are to supervise the discipline and the technical and physical training of the force,

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<sup>1</sup> See W. G. Bleyer, *Main Currents in the History of American Journalism*, pp. 28-42.

<sup>2</sup> See Chap. IX.

to purchase and distribute uniforms, and to supervise the upkeep of police property.

Ranking below these officials are either captains or lieutenants; in cities which have district stations one or more captains or lieutenants are placed in charge of each station. The subordinates are sergeants, patrolmen, detectives, clerks, stenographers, police matrons, telephone operators, chauffeurs, and police court bailiffs. The patrol force is divided territorially; part of it is mounted and part of it on foot. It is also divided according to function, some officers being assigned, for example, to duties concerned with street traffic. The police matrons enforce regulations that relate to public dance halls and amusement resorts, and exercise authority over the segregated female prisoners.

In the police organization is a Detective Bureau and a Bureau of Identification; in some cities there are other divisions, such as the Bureau of Missing Persons. The Detective Bureau is directed by either a Chief of Detectives or a Lieutenant of Detectives. The other men who work in the Detective Bureau have the respective ranks of Detective Sergeant and Detective. Some of them are assigned to duties in which they specialize; they are known as the pawnshop squad, the automobile thief squad, the gambling squad, the vice squad, etc. The head of the Bureau of Identification is frequently a highly trained civilian who is an expert in the system of identifying persons by their fingerprints and skull measurements. The Bureau of Identification files and preserves the photographs, descriptions, fingerprints, and criminal records of all professional criminals in the city and in some other cities.

Reporters, in order to obtain coöperation from police officials, must gain their confidence and seek their friendship as far as possible. Newspaper reporters can gain the friendship of the individual policemen by giving them credit when they deserve it, and, at least, by spelling their names correctly. Except in a few instances, however, policemen—both officials and members of the rank and file—stand in awe of newspaper publicity and covet it. The officials sometimes line the walls of their offices with newspaper clippings relating to their exploits, and

the patrolmen and detectives often carry the clippings around in their wallets. The policemen never know when a newspaper is going to criticize them or the police department for inefficiency and neglect of duty, and they realize an obligation to the police reporter. The methods ordinarily used by policemen in catching criminals are seldom as spectacular or as intelligent as readers of fiction are led to believe. A great many detectives are men of high intelligence, but their principal method of catching criminals is by employing "stool pigeons," variously a class of demi-criminals who hang around the underworld, of drug addicts, and of criminals over whom an indictment or a suspended sentence is kept hanging. Detectives, too, have good memories and make an intense effort to remember criminals and their habits.

**Getting the Facts.**—Ordinarily, the reporter goes to the police station at a certain hour and remains at his post for a certain length of time. Some newspapers do not permit the police reporter to leave the station for any purpose during the working period. The police reporter either has a typewriter and private telephone in the station, or else he occupies an office in the vicinity of the station. As complaints are made to the police station by telephone or in person, an official—usually a Desk Sergeant—records entries on *complaint blanks*. These records tell the reporter, for example, that a burglar has been reported to have broken into the home of Mrs. John Jones, 937 Waverly Place, at about 11:30 P.M. and to have stolen two diamond rings and a gold bracelet, valued at \$1,750, and that the burglar entered the house through a rear window. The complaint, furthermore, contains the information that Detectives Smith and Brown have been assigned to investigate the case. Arrests are recorded on the *blotter*, a book of record in which are written the names and addresses of persons who are arrested, the charges upon which they are booked, the names of the arresting officers, the list of articles found upon the prisoners' persons, and the time the arrests were made.

Some police departments permit reporters to examine the complaint blanks and the blotter, with the understanding that reporters will not make use of complaints marked "not for



publication"; such complaints have to do with crimes in which the police fear that publication of the details will prevent the arrest of the criminal. Other police departments, however, do not permit reporters to examine the station records, but instead prepare bulletins from the records and post them for the information of the reporters. In cities which have a single central police station instead of several district stations, the task of the newspaper is simplified because all complaints and arrests, as well as accidents, suicides, and similar information, are telephoned to this central station. In many cities, however, there are several police stations, and a reporter is stationed in each.

Following an arrest or a complaint, the reporter questions the officers and prisoners and prepares a news story. Sometimes, in order to make his story complete, he telephones eyewitnesses and other persons, such as neighbors, relatives, friends, and business associates of the principals in the affair. At certain intervals a messenger comes from the newspaper office for the reporter's copy. But if a particularly important story "breaks" or if a routine story breaks near the deadline for an edition, the reporter telephones the facts to a rewrite man in the office. In cities in which reporters are stationed at outlying district stations, the reporters always relate the facts over the telephone to a rewrite man in the newspaper office instead of sending in copy by a messenger. Frequently, an important story requires investigation and interviews at the scene of the crime or elsewhere than the police station. In that event the reporter telephones his office and either receives permission to leave the station, or is told that a reporter will be sent from the office. Frequently, the reporter accompanies police officers who make arrests, investigations, and raids.

When a reporter at a police station learns of the commission of an important crime, he proceeds to secure the details by methods which depend upon the circumstances. The methods to be pursued are obvious to any reporter with ordinary common sense, but the success with which he meets in obtaining facts depends entirely upon his ability to elicit information from reluctant persons and to make deductions from observable data. There is no place in this chapter to discuss methods of crime

detection; but the following story written by Parker Rusk for the *Atlanta Constitution* illustrates the number and character of persons interviewed by the reporter, the character of information that it is necessary to obtain in order that the reporter may answer all the questions that will arise in the mind of the reader, and the method adopted by the reporter and investigator; the names of the principals have been changed.

William S. Adams, attorney for the Simmons faction of the Knights of the Ku Klux Klan, and prominent figure in a series of sensational events involving that organization, was shot four times and almost instantly killed while he sat in his office in the Atlanta Trust Company building at 4 o'clock Monday afternoon, by Phillip E. Wilson, publicity representative for the imperial palace and editor of *The Nighthawk*, official organ of the Evans faction.

After hurling his revolver to the floor of the attorney's office, Wilson ran to the floor below, where he was caught by George W. Allen, insurance man, and held until Officer C. O. Cochran arrived from his beat on the street below to take him in custody.

According to Officer Cochran, Wilson declared that he was glad Adams was dead. "I may hang for this, but he was planning to ruin me, and I had just as soon be hanged as for him to have ruined me," he said.

Wilson was held at the police station until 7:30 o'clock, when, after he had steadfastly refused to make a statement to the officers assigned to the investigation, he was transferred to the Fulton tower under heavy guard.

Working with city detectives, attachés of Solicitor Boykin's office late Monday night completed a preliminary investigation of the shooting and announced that the Fulton county grand jury Tuesday will be asked to indict Wilson on a charge of murder.

Wilson was held incommunicado at Fulton tower. Sheriff Lowry stated that Judge John D. Humphries had requested him to deny anyone admission to see Wilson and had stated over the telephone that if necessary he would send a written order to the jail forbidding visitors. On the promise of the sheriff that such an

order would not be necessary, he stated, the written order was not furnished.

Mrs. Phillip E. Wilson, wife of the slayer, was in Atlanta Monday night but could not be found. Attachés of the imperial palace admitted that they knew where she was but refused to say where. It could not be learned whether she knew anything of the shooting or of incidents leading up to it.

Officers closely questioned Mrs. M. A. Holbrook, of 326 Stewart avenue, stenographer for Adams, and Mrs. Oscar Heyman, of Cleveland, Ohio, a client of Adams, who were eyewitnesses to the shooting.

"Wilson came to Mr. Adams's office shortly before 4 o'clock and found Mr. Adams engaged in a telephone conversation," Mrs. Holbrook said. "W. T. Rogers, who I think is connected with the office of Henry J. Norton, head of Atlanta Klan No. 1, was sitting by Mr. Adams's desk. After waiting a few minutes, Wilson arose and left the office, stating as he did so that he would return in about an hour, when he could talk business with Mr. Adams privately.

"He had just had time to get a short distance down the hall and come back when he reentered the office, and, without a word, began firing at Mr. Adams, who sat at his desk.

"I was so excited I didn't look around until the firing ceased. There were four or five shots fired. Mr. Adams screamed after each shot. After the last shot was fired, Wilson left the office, throwing his gun to the floor as he passed through the door.

"When I looked at Mr. Adams he was lying on the floor, screaming, and blood was spurting from a wound in his face. Mrs. Heyman and myself ran down the hall to the office of the Fulton Finance Company."

According to Mrs. Heyman, she had just entered Mr. Adams's office and taken a seat when Wilson entered and began firing at the attorney. Wilson made no statement, either before or after the shooting, she said.

As Wilson reached the floor beneath, George W. Allen, insurance agency supervisor for W. B. Hawkins, manager for the Aetna Life Insurance Company, heard a woman screaming: "Catch that man,"

Allen told the police. Allen halted Wilson as he was continuing his flight to the seventh floor, he said.

According to Allen, he ordered Wilson to hold up his hands. Searching him, he said, he found a large hunting knife, open, concealed on Wilson. After removing the knife, he said, he took Wilson into an office and awaited the arrival of officers.

While waiting, Allen said, he asked the publicity man why he had shot Adams, to which Wilson is said to have replied:

"He was going to publish some reports about me that would have ruined me, and if I hadn't shot him he would have ruined me." Allen said that Wilson declared he was "sorry yet glad" when informed that Adams was dead.

Officer Cochran, patrolman on the beat, took Wilson to police barracks, after Call Officers H. D. Donehoo and Ed. Arthur arrived and took charge of the body and locked the door to keep the throng of curious, which had gathered, out of the law office.

W. T. Rogers, who was in Adams's office when Wilson first entered, told the police that Wilson asked to speak to Adams, saying:

"I am through with it all, and I am going home tonight."

Rogers said that Adams was busy on the telephone, so he wrote him a note, saying, "Talk to him," indicating Wilson. On the same scrap of paper, Rogers said, Adams wrote this reply: "I will. You wait outside."

Rogers said he went into the adjoining office, occupied by A. E. Murphy, Adams's law partner, and shortly five pistol shots rang out. Opening the door, he said, he saw Wilson leave Adams's office by the door to the hall and throw a pistol back into the office. Wilson ran down the steps to the next floor, Rogers following.

At headquarters Wilson was placed in an isolated cell and held without bond. A number of men recognized by newspaper men as being klansmen, some representing the Simmons faction and others the Evans faction, now in control, called and tried to see him, but admission was denied them. W. H. Mills, said to be an employe of the imperial palace associated with Wilson, was among those seeking to visit the cell.

Opinion that the shooting was the result of a personal affair between Adams and Wilson was expressed in a written, unsigned statement purporting to have been issued at the imperial palace Monday night.

After repeated efforts to reach the imperial officers for a statement had failed, a *Constitution* reporter was presented at his office with the following typewritten memorandum:

"An official of the imperial palace, when asked for a statement, said:

"A most deplorable affair. We regret more than words can express. It must have been a personal matter between participants. The unfortunate affair was a great and most regrettable surprise to us.

"Mr. Wilson had not been in his office for two days."

The police reporter probably learned about the crime described in the foregoing news story after a call came to the police station that "Phillip Wilson has just shot and killed William S. Adams in the latter's office." The reporter immediately sensed a big news story: one of the leaders of the Evans faction of the Ku Klux Klan had killed a prominent leader of the Simmons faction, which had been defeated in a sensational battle for control of the organization and the funds that accrued to it. The reporter probably notified his city editor, who sent a substitute to the police station and assigned a second reporter to assist in the investigation. The reporter began immediately to discover how and when the incident happened. In the back of his mind, however, was the perplexing question, "Why did he kill him?" Police and the District Attorney furnished the reporter with some of the details that they had obtained from eyewitnesses, but the reporter, after learning the identity of the eyewitnesses and the others who were in the vicinity of the slain man's office at the time of the crime, made an effort to question them. These persons included the slain man's stenographer, one of his clients who was present, and a man who was in the office during Wilson's first visit there. In addition, there were two men who captured Wilson in the course of his flight and the policeman who arrested him. These men told the re-

porter what Wilson had told them about why he had killed Adams. Mrs. Wilson, who might have been able to furnish an explanation of the motive for the crime, could not be found. Efforts to obtain an explanation from officers of the Ku Klux Klan were unsuccessful, except for the voluntary "hand-out" sent to the reporter and the fact that certain klansmen had attempted to visit Wilson at the jail. The explanation could not be obtained up to the time of going to press, but the reporter made every effort to answer the question that he knew would arise in the readers' minds: "Why did he kill him?" The search for the explanation, therefore, was continued by the reporter on the following day.

The fact that the questions arising in the readers' minds remain unanswered give to a crime story its chief element of interest. The mystery and suspense that cause a crime story to continue in the newspapers for several successive days sometimes abruptly end because one of the principals confesses, but more often they subside gradually because of the accumulation of evidence. After a serious crime has been committed the public wishes to know all of the circumstances, and the reporter should try to obtain and relate all of the details except those that are offensive because of their sordidness, those whose publication might hinder the police in their efforts to apprehend the criminal, and those that describe criminal methods in such a manner that other persons are taught how to commit crime.

In reporting mysterious crimes, the details are especially important. Police, in solving mysterious crimes, and reporters, in describing them for their readers, pay close attention to the criminal phenomena known as *clues*. Clues may be sought either in the physical surroundings at the scene of the crime, or in the personal relations of the victim and his associates. Usually, clues are obtained from both sources. The reporting of physical details is a simple matter of discovering them and of connecting them objectively with the crime; as for example, the following news story:

[ Upon a few strands of hair found on  
the wrist of the victim, police today were  
trying to fasten the guilt of a suspect ]

in the murder of Miss Roberta Alexander.

Dr. Andrew D. Rawlings, of the anthropology department of the State University, was examining the hair with a view to comparing it with that of the suspect.

The reporting of clues which are connected with the personal relations of the principals, that is to say, clues which point to a motive for committing the crime, requires more skill than the mere reporting of physical clues. This, of course, is true not only because such evidence is *not objective*, but because the reporter cannot publish such information except at the peril of committing libel and of casting suspicion upon innocent persons. The four news stories which follow illustrate the difficulty of reporting a murder mystery which has its explanation in personal motives. The first news story reports the *discovery* of the crime, and the subsequent stories report the progress made by the official investigators.

Philip Gordon, wealthy insurance broker and a former state amateur golf champion, was found dead in his bed at noon yesterday (Wednesday), a victim of murder. He had been dead for more than forty-eight hours.

Police believe that Gordon was killed by a burglar who entered his home at 1817 Lenox avenue Sunday night. The time is fixed by a taxi driver and two of Gordon's employees.

Henry Wright, the taxi driver, drove Gordon to his office at 34 West Main street after the insurance broker had alighted from the Philadelphia train at the Union station at 11 o'clock Sunday night. Miss Helen Frazier and Mrs. Rowena Quisenberry, clerks in Gordon's office, said that Gordon had not been in the office, to their knowledge, since last Saturday morning when he left for Philadelphia accompanied by his wife, Mrs. Sara Gordon.

Police believe that Gordon visited his office Sunday night and later walked to his home, a few blocks distant. They are hoping that information will be volunteered by persons who may have seen Gordon after he left his office Sunday night.

Mrs. Gordon returned from Philadelphia at noon yesterday. She was horrified when she entered her husband's bedroom and found his disrobed body lying across the middle of the bed, his head crushed in above the left temple. She ran screaming from the house and summoned neighbors.

An examination by the coroner's physician and police revealed that the insurance man had probably been struck from behind with a heavy blunt instrument by a person who had concealed himself in the house. There were no indications of a struggle.

An investigation of the premises showed that the electric light wires had been cut at the meter and that the assassin had gained entrance to the house by cutting a hole in the screen door of the back porch so as to lift the catch, and by jimmying a back window that opened on to the porch.

Gordon's empty pocketbook and some legal papers were found upon his dressing table, and his watch was discovered in the pocket of his vest which was lying upon his neatly folded trousers on a chair. Notwithstanding these facts, police are proceeding upon the theory of robbery. They see significance in the fact that the pocketbook is empty and they connect Gordon's midnight visit to his office with the crime on the assumption that he was followed to his home by the assassin.

Detective Sergeant Clarence Moore has been assigned to investigate the case, and District Attorney Floyd Malone is cooperating.

A coroner's inquest will be conducted today, Coroner Arthur Beck announced. Funeral arrangements will be announced today.

Gordon, who was 41 years old, had been a partner in the insurance business with his father since his graduation from the state university in 1903. He was moderately wealthy and is said to have carried the second largest amount of life insurance in the city. In 1924, he won the state amateur golf championship, defeating Winthrop Wallace. He lost his title to Wallace in 1925 and had not competed in the state tournament since that year. Gordon married Miss Sara Rathbone in 1920. They had no children. He is survived by his father, Perry B.



Gordon; his mother; and a younger brother Prentice, an attorney associated with the firm of Braden and Chisholm

Almost all of the information contained in the foregoing news story, except that which is biographical, was obtained by the reporter from the police. The reporter recited all of the circumstances and the physical conditions that surrounded the crime, and added the information that the police believe robbery to have been the motive for the crime. In addition, he related how the police were proceeding in an effort to solve the mystery. A fact which was omitted but which the reporter could have included was that "The police are also interrogating residents of the neighborhood to learn whether any persons were seen near the Gordon home at about the time the murder is supposed to have been committed."

The following news story was published the next day:

A curtained Buick roadster that stood behind the home of Philip Gordon, wealthy insurance broker, during the time he was murdered Sunday night, is the clue that police were following yesterday in an effort to find the murderer.

Mrs. Agatha Warren, who lives at 1820 Morris avenue, directly behind the Gordon residence, at 1817 Lenox avenue, told police yesterday that she was awakened from her sleep in the early hours of last Monday—probably shortly after midnight—by the lights of an automobile shining in her face. The window of Mrs. Warren's bedroom faces the rear of the Gordon residence.

Mrs. Warren said she paid little attention to the automobile at first, but after a few minutes heard a male voice say to another person, "Did you get him?" She heard no answer, but got up and went to the window. She saw the car, which she identified as a Buick roadster with curtains, start off through the Gordon side yard toward Lenox avenue.

With this information, police believe they can account for the murder instrument as being the handle from an automobile jack.

Police now think that Gordon's assassin had knowledge of his trip to Philadel-

phia and of the exact time that he would return. They believe the murderer forced an entrance into the house through a window opening off the back porch, went into Gordon's bedroom, and hid there in a closet to await his return and a favorable opportunity for striking him.

Proceeding upon this theory, the police have abandoned the robbery theory, and are questioning Gordon's relatives, employes, and associates with a view to finding in his past life facts that may lead to the discovery of a motive for the crime.

A coroner's jury returned a verdict yesterday, after a half dozen witnesses had testified. The jury found that Gordon had come to his death as the result of a "blow struck by a heavy blunt instrument in the hands of a person unknown." Carl F. Benge, coroner's physician, testified that the blow struck by the assassin had resulted in instant death.

Prentice Gordon, an attorney and brother of the murdered man, said yesterday that the amount of life insurance carried by his brother was less than was currently believed. Mrs. Sara Gordon, the widow, was named as the beneficiary in all of the policies, he said.

The foregoing news story, on the second day following the discovery of the crime, emphasizes the discovery of a new clue—the presence of the automobile behind the murdered man's home after midnight Sunday. This information, which relates to a physical phenomenon, the reporter obtained from the police, but it was confirmed in detail in an interview with Mrs. Warren, the informant. By this time the reporter has visited the scene of the crime and has become familiar with the physical surroundings. He has also observed that the police were questioning certain persons, and he has learned from the police that the interrogations were expected to produce clues which concern not the physical surroundings but the history of the murdered man's life and the significance of the trip he and his wife made to Philadelphia. He has also learned the line along which the police are working and he has formed a tentative conclusion as to who will be arrested. But he cannot write about these facts except at the peril of casting suspicion upon persons of whose

guilt he is uncertain. On the third day, however, an arrest takes place, and he is permitted more license in what he may write.

Police yesterday arrested Marvin Thomas, 28, a bond salesman, on a charge in connection with the murder last Sunday night of Philip Gordon, wealthy insurance broker and former state amateur golf champion.

Thomas is being held without bail pending a preliminary trial set by Municipal Judge W. L. Higgins for Monday morning.

The accused man was brought to the police station yesterday afternoon and questioned by Chief of Detectives William Walker, Detective Sergeant Clarence Moore, and District Attorney Floyd Malone. Prentice Gordon, brother of the murdered man, was also present. After an hour of interrogation Thomas was released, and a half dozen other persons were brought in for interrogation.

At 5 o'clock, however, Chief of Detectives Walker and Patrolman Wesley Winter arrested Thomas in the lobby of the Hotel Morisana. Immediately after his incarceration, Thomas sent for Asa Watson, and retained him as counsel.

Watson cautioned his client to make no statement for publication. Watson, however, declared to newspaper reporters that "the case against my client is a 'frame-up' engineered by Prentice Gordon." He declined to add to this statement.

Others questioned by the detectives were Mrs. Sara Gordon, widow of the murdered man, Wendell Rogers, 24, son of Dr. Pettit Rogers and a friend of Thomas, Dr. Pettit Rogers, and Mrs. Pettit Rogers. The police did not disclose the nature of the interrogation.

Chief of Detectives Walker announced yesterday morning that a park employe had found in Fenwright park the handle of an automobile jack. Walker said that the handle from a jack in a certain Buick roadster the police had under observation was missing. He declined to say to whom the automobile belonged. "We've got the right car, though," he asserted.

All of the information contained in the foregoing news story was obtained by the reporter from the police. The reporter had

also questioned one or two of the persons who were interrogated by the police, and from what they have told him has probably been able to construct a plausible theory of the crime. But he cannot, except at the peril of committing a libel and perhaps an injustice, develop his theory in a news story by making inferences from the facts in his possession. By this time, however, his readers have begun to analyze the published facts and have constructed theories regarding the crime. The readers are connecting the physical facts—such as the presence of the automobile, the facts regarding the life insurance, the murderer's knowledge of the time that Gordon returned from Philadelphia, the finding of the automobile jack, etc.—and are guessing at various motives.

The following news story, which appeared a week after the publication of the third news story, explains the mystery:

Mrs. Sara Gordon was held to await the action of the grand jury at the conclusion of the preliminary trial in Municipal Judge W. L. Higgins' court yesterday, at which she was accused of conspiracy to murder her husband, Philip Gordon, wealthy insurance broker and former state amateur golf champion.

Wendell Rogers, 24, son of Dr. Pettit Rogers, of the Rogers & Thompson clinic, was also held to the action of the grand jury on the same charge.

Bail for both defendants was fixed at \$15,000, and was furnished by relatives.

In a preliminary trial last Monday Marvin Thomas, 28, a bond salesman, was held without bail on a charge of committing the murder.

Philip Gordon was murdered in his home on the night of May 10. His disrobed body was found in bed by his widow after she had returned from Philadelphia on Wednesday, the thirteenth. Gordon had been struck over the left temple with a blunt instrument which had caused instantaneous death.

Evidence was presented at the trial yesterday by police officials who said they had traced a telephone conversation on the afternoon of May 10 between Mrs. Gordon, who was in Philadelphia, and Thomas, who was in this city.

It was the contention of the state that Thomas and Mrs. Gordon had conspired

to kill Gordon in order that they might be free to marry and that they could obtain the proceeds of Gordon's life insurance.

Wendell Rogers, the state alleged, was a party to the crime in that he had knowledge of the plan and drove Thomas to the Gordon home, waited for him in an automobile while Thomas murdered Gordon, and afterward drove him to his (Rogers') home where he and Thomas spent the night.

The state also introduced evidence to show that Rogers was the owner of a Buick roadster, and that when it was found in his garage it was curtained. Mrs. Agatha Warren, 1820 Morris avenue, whose bedroom faces the rear of the Gordon residence, testified that on the night of the murder she was awakened by automobile lights shining in her face, and that she identified the car in the Gordon back yard as a Buick roadster. She further testified that she heard a male voice in the automobile inquire, "Did you get him?"

The handle from an automobile jack said by police to have been found in a lagoon in Fenwright park was introduced as an exhibit, and Detective Carl Gill testified that the handle was missing from the jack found in Rogers' car, and that the handle found in the lagoon fitted the jack found in Rogers' car.

The defendants did not testify in their own behalf. Nor did Thomas testify at his preliminary trial last Monday. Dr. and Mrs. Pettit Rogers, however, testified yesterday for the defense, establishing an alibi for Thomas and Rogers. Dr. and Mrs. Rogers asserted that they heard the *men come home at 10 o'clock on the night of the murder*, that the two men immediately retired, and that they were present at breakfast the following morning.

Asa Watson, counsel for the three defendants, pleaded with Judge Higgins for their dismissal.

"The state has only the sheerest circumstantial evidence against these three innocent and respectable persons," he declared.

"As to the charge that Thomas was intimate with Mrs. Gordon and that the two conspired to kill him in order to obtain his life insurance, that is the weirdest bunk.

"Prentice Gordon thinks that, by casting a legal doubt upon the widow's title to the insurance, the proceeds will revert to Gordon's estate, that is, to his nearest relatives, his brother and his parents.

"The police and the district attorney are willing to fall in with this plan concocted by Prentice Gordon because it is the easiest way they can remove the crime from the long list of 'unsolved' murders in this community. The citizens of this town are getting fed up on this rotten police department and the incompetency of the district attorney's office, and the police and the district attorney know it.

"At the beginning of this investigation the police declared it was an open and shut case of robbery. Why did they change their theory after Prentice Gordon butted in?

"The chances are that Philip Gordon was killed by a robber who followed him home from his office. We don't know who killed Gordon. We are not trying to cast suspicion on anybody. But the good citizens of this community are not going to stand much longer for the brand of so-called crime prevention that is being given us."

**Newspapers as Detectives.**—In the search for criminals, newspapers are frequently useful because they print descriptions of suspects, of material witnesses, of automobiles, and of instruments, and these are read by many persons who afterward identify them and report to the police. On the other hand, newspapers sometimes interfere with crime detection by informing criminals of the plans made to catch them. One newspaper, for example, announced the direction in which the police were searching for a criminal by reporting that policemen were watching a motor launch at a certain pier with the expectation that the criminals would return to get it.\* Another newspaper carried the following story under an eight-column headline:

#### BUSINESS MEN THREATENED; TRAP LAID

Two dummy packages resembling money which had been planted at spots in the East End were being watched by city

\* See *Criminal Justice in Cleveland*, p. 530.

[detectives early today as a result of  
letters demanding \$8,000 to \$10,000.<sup>4</sup>]

Some persons think that newspapers ought never to participate directly in law enforcement. This view arises as a result of the anti-social practices of certain sensational newspapers which seek to run down criminals and to obtain confessions from them which the papers do not turn over to the police until they have been published by the paper.

For example, a New York newspaper, in 1922, in connection with a sensational murder, published on its front page an offer of \$1,000 reward to any person who would furnish material evidence in the case. An underworld character replied to the advertisement and was taken by a newspaper reporter to a hotel room where he dictated a long "confession," incriminating another man. He was kept behind a locked door until his confession had been investigated and published in a final edition. Then, in violation of the promise given him, he was turned over to the police. Similar stories concerning the improper intervention of newspapers in crime detection are recorded in the volume, *Criminal Justice in Cleveland*, pages 540-543. Some sensational newspapers employ tipsters, who are a species of underworld stool pigeon.

There are, however, isolated instances in which the newspaper serves the public interest by intervening in the administration of criminal justice; as, for example the campaign of the *Birmingham News* in 1927 to suppress flogging in Alabama. Whenever the police department is openly in league with criminals and the community thereby is rendered powerless to protect itself from criminals, the intervention of newspapers may be justified. Such a situation existed in Canton, Ohio, in 1926, when the *Cleveland Press* brought to justice the murderers of Don Mellett, a Canton editor, after the public prosecutor and the police officials had taken no action. Those persons who desire that newspapers refrain absolutely from intervening in the administration of criminal justice assume that government everywhere is efficient, honest, and impartial. The experienced newspaper man knows that the contrary is sometimes true: that efficiency, honesty, and impartiality in government, especially in the ad-

<sup>4</sup> *Ibid.*, p. 531.

ministration of criminal justice, depend in great measure upon the vigilance of the private citizens of the community. The safest test to apply is whether the intervention of the newspaper is wholly in the public interest or merely in the interest of the newspaper in its character of a show business, that is, as a stunt to promote circulation.<sup>5</sup>

**Trial by Newspaper.**—Newspapers are naturally eager to give the public all the details of an interesting or mysterious crime, but sometimes they frustrate justice by publishing portions of evidence prior to a trial; frequently this makes it difficult to secure an impartial jury and sometimes results in injustice to the accused person or in a change of venue.

The author once reported that a prisoner who had been indicted for a sensational murder and was awaiting trial, but of whose guilt there was doubt, had planned an escape from the jail. There was no doubt that the prisoner had planned to break jail; key patterns and the confessions of inmates of the jail furnished incontrovertible evidence. But the publication of the news story which contained these details convinced almost unanimously the citizens living within the jurisdiction of the court that the prisoner was guilty. Consequently, when the time came for the trial it was found necessary to summon a venire from an adjoining county. The prisoner, however, was acquitted.

Ought the story of the planned jail break to have been published?

Prosecuting attorneys and police officials as well as the counsel for defendants, often try to influence public sentiment in advance of a trial by giving out statements of evidence or opinion. This practice became so mischievous in Baltimore that the Judge of a criminal court, in 1925, cited for contempt of court a Chief of Detectives who gave a newspaper reporter certain evidence against two alleged robbers that was calculated to aid in the conviction of one of them.<sup>6</sup>

A typical example of trial by newspaper, which appeared in one of the most distinguished New York newspapers, follows:

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<sup>5</sup> By tracking down and convicting a "confidence woman," the *Cleveland Press* was able to add 20,000 permanent readers to its circulation list. Each new reader was calculated to be worth \$13 to the newspaper.

<sup>6</sup> For a description of the case, see *Ex parte William Sturm, et al.* 136 Atl. 312; also, *New York Times* editorial, Jan. 22, 1927.



Edward J. Reilly, well-known Brooklyn lawyer, who has taken over Lee's defense, opened his preparations with a veiled threat to explode the case the police say they have built up against the janitor. The so-called "mystery woman" who identified Lee as the man she saw throw a bundle into the Brooklyn-Manhattan-Transit yard, is "due for a surprise," Reilly said.

"It ought to be clear to any one that there is no evidence against Lee," Reilly said.

Captain Bishop of the Bergen Street station, was agitated over an "interview" purporting to have come from the suspect in which Lee was quoted to the effect that police had used an "electric massage machine" to extort a confession from him and that during the grilling a bottle of whiskey was consumed.

"However, the evidence is piling up against him fast and by the time the trial begins we won't need any confession," Captain Bishop declared. "He will be convicted on the evidence that we shall have by that time."

The extent to which some newspapers have gone in interfering with the administration of criminal justice has been summarized by the *Chicago Tribune* in an editorial entitled "Justice and Publicity":<sup>7</sup>

Criminal justice in America is now a Roman holiday. The courts are in the Colosseum. The state's attorney's office often is an open torture room of human souls. Exposure of the processes of justice, originally a public safeguard, has been exploited as a field for popular amusement. They are a rich forage for sensation mongers and the yellow press. Their publicity uncontrolled is debasing American thought. It is contributing to the delinquency of criminal justice.

The Franks case has been a three months' moral pestilence imposed upon our people before the trial. It is an aggravated instance of what has happened with increasing frequency for two decades since the Thaw trial and before. There is reason for the statement by the Chief Justice of the United States that the product of our judicial machine is a national disgrace. It has been turned into a public show.

The injury to justice is in publicity before the trial. Newspaper trials before the case is called have become an abomination.

<sup>7</sup> July 23, 1924.

The dangerous initiative that newspapers have taken in judging and convicting out of court is journalistic lynch law. It is mob murder or mob acquittal in all but the overt act. It is mob appeal. Prosecuting attorneys now hasten to the papers with their theories and confessions. Defense attorneys do the same. Neither dare do otherwise. Half-wit juries or prejudiced juries are the inevitable result.

The *Tribune* has its share of blame in this. No newspaper can escape it. They have met demand, and in meeting it have stimulated public appetite for more. "The old dilemma as to which comes first, demand or supply, the newspaper or the people's demand for the newspaper," says Frances Fenton in the *Journal of Sociology*, "has given place to a point of view in which we recognize the interaction of demand on supply and of supply on demand. The control by the consumer of the quality of the supply of any commodity is difficult." But public appetite remains the dominating condition. Behind press sensationalism is public demand; and behind that is the human craving for excitement.

Papers that refuse to accept this harsh discipline of public demand will die. Many have died. A debased currency always will displace a sound currency.

The slide downward is inevitable. Who can deny that it is founded on authentic human nature? General reform must be undertaken or none at all. The nation's press must act together.

There is one remedy. Drastic restriction of publicity before the trial must be imposed by law. England by custom and by law imposes such restrictions. English papers print only the briefest and coolest statement of the facts before the trial. Three papers there were fined heavily not long ago for news reports that to us were mild. Publicity before the trial should be restricted, it may be, to official statements by police or state's attorney. If that be unfair to the defense, some other rule should be worked out. It is a problem suitable for the American Bar Association to take up. In conjunction with representatives of the press a fair but stringent law could be devised.

The *Tribune* advocates and will accept drastic restriction of this preliminary publicity. The penetration of police systems and the courts by journalists must stop. With such a law there would be no motivation for it. Though such a law will be revolutionary in American journalism, though it is not financially advisable for newspapers, it still is necessary. Restrictions must come.

It will in no way threaten the freedom of the press. It is only a delay. It is enforced waiting so that the official instruments of justice may have a chance to operate. "Public hostility or sympathy, against or for, an accused person may influence the jury

acquitting the attorney's clients, but also manufacture evidence and bribe jurors. Although attorneys are forbidden by law to furnish bond for accused persons, many of the so-called criminal lawyers nevertheless have connections with professional bondsmen who furnish bail in any amount for clients of the attorney; these attorneys are making crime safe and profitable.

**Writing the Crime Story.**—Most crimes are not interesting. They are reported as a matter of chronicle and make small demand upon the reporter's literary skill. But the unusual crimes—those containing the elements of drama, mystery, or humor—merit the literary technique of a skilled news writer. Too frequently, however, crime stories are written by men capable only of using many adjectives and of employing exaggerated imagery. To write exaggerated accounts of crimes, to produce news stories that drip with false sentiment, is a work the self-respecting craftsman will not allow himself to perform. The newspaper man, because his function is to report what is interesting, ought to make use of every legitimate literary device that will make his story interesting, but he is not required to adjust his style to the lowest level of popular taste.

The news writer, unlike the imaginative writer, works under a disadvantage that tends to minimize that chief characteristic of the literary craftsman—restraint. Unfortunately, the necessity for writing a story immediately after witnessing the event, and the pressure of the inevitable deadline, sometimes cause even the competent news writer to write "at the top of his voice." But the news writer should try to be aware of this disadvantage while he is writing and he should even revise his stories after publication so as to rid himself of the fault of employing worn-out clichés and exaggerations.

Most crimes that are interesting possess at least the semblance of plot. The news writer should train himself to recognize such narrative material and to employ narrative technique in his news stories. In the following news story by R. M. Lee, city editor of the *Chicago Tribune*, the news writer's sense of narrative revealed to him that a plot was existent in the event, and that he had encountered a hero and a hero's antagonists. Other circumstances were present to enrich

the plot and to enhance it with humor. The author, who is possessed of literary skill, invented a bit of dialogue and produced a story with a chuckle.

Policeman Walter Conrad of Sheffield avenue station is on sick leave. And spring has been raw and backward. But yesterday the sun shone in the glory proper to summer and Policeman Conrad felt he might extract from its rays some healing component, and so he set forth upon Belmont avenue.

Now then, as he drew near to Racine avenue, a citizen, full of civic pride and complaint, hailed him with:

"Hey, Officer!"

Policeman Conrad, though on sick leave and indisposed to engage in robust undertakings, was wearing his uniform. It was this that caught the citizen's eye. Conrad paused.

"There's a mob of hoodlums called the Chester Pleasure and Benevolent Association at 1242 Belmont avenue," explained the citizen. "They raise hell continuously. Can't you do something?"

Policeman Conrad is on sick leave. But there was something potent in the summer sun of yesterday. He sauntered on to the Chester clubhouse, entered, and heard a babel of sound that was like to crash his ear drums.

"A copper," said one of the pleasurable and benevolent brotherhood. There was silence.

"Now," said Conrad, "what's the idea? The neighbors think this is a boiler factory. Why don't you go out to the country? Cut it out or I'll have to throw some of you in."

He turned to go, first having cast a determined glance about the club. But as he turned a pleasurable and benevolent youth popped him one smack on the eye. It began to turn violet almost immediately. Before Conrad could establish himself in a posture of defense and offense the whole benevolent fraternity landed on him as a man. And in about the time it would take an expert linguist to articulate "Eeeney, meeney, miney mo" Policeman Conrad was catapulted over the sidewalk, while inside the Chester club the healthy, good-natured boys were joining in a booming chorus:

"Has anybody here seen Kelly,  
"K—E— double ELL—Y?"

Policeman Conrad is on sick leave. He had been ordered to take rest and avoid excitement. He got up. He dusted his cap, adjusted his uniform. He went to the nearest telephone.

"Is this Town Hall station?" said he. "Well, then, send a wagon and a couple of men to 1242 Belmont avenue. Back up the wagon and wait."

In a couple of minutes Conrad heard the clang of the patrol bell. He fixed his cap firmly on his head and stepped resolutely through the doors of the club-room of the Chester Pleasure and Benevolent Association. The lusty investigation into the whereabouts of Kelly suddenly ceased. In the street the patrol driver executed a neat maneuver and backed smartly against the curb. Two policemen emerged from the rear end of the wagon. They paused a moment before inquiring their errand.

Then burst upon their ears many sounds of conflict, muffled accents of pain and rage, roars of those angered, and snarls of those seeking revenge. The front doors burst open and a pleasurable and benevolent brother shot down the steps into the arms of the waiting policemen. Another and another. There were bloody noses and torn raiment. The club-fellows hit the sidewalk with the regularity of clockwork. And just as regularly they were tossed into the wagon. Then a pause. Policeman Conrad stepped lightly out of the doorway.

"Is that all?" asked the wagon men.

"That's all that's able to come," said Conrad. "The rest is asleep in there. They'll come out of it after a while."

The bell clanged. The patrol rolled away. Patrolman Conrad cocked his cap on one corner of his head and flicked a speck from his sleeve.

Patrolman Conrad is on sick leave.

Contrast the bright good humor of the foregoing story with the following story of mawkish sentimentality that makes a hero out of a brutal criminal and veritable Dogberrys out of the officers of the law. The writer of the following story, in a futile effort to construct a hero out of inadequate material, resorts to false sentiments and false imagery.

All the dramatic elements and characters of the modern crook play are contained in the case of Martin Durkin, the handsome "shooting sheik," who sits in a cell, shackled and heavily guarded, awaiting the penalty for murder.

There is a beautiful young country girl-bride, swept off her feet by the impetuous wooing of the romantic crook; the pretty city sweetheart abandoned by Durkin for the little country girl; sorrowing parents; vengeful police; an epic tale of daring by Durkin; a nation-wide hunt in which the federal government played a leading part—and a dash of humor.

Durkin, in his early 20's, is tall, dark, clean shaven, clean-cut, with the head and face of a romantic actor. He took to crime as a means of easy livelihood. Automobile stealing was his principal occupation. Leading a gay and care-free life, he spent money freely, pursued love affairs, and finally selected Betty Werner Andrews, 23, dark and good-looking, as his "steady." Betty gave birth to a boy, of whom she says Durkin is the father.

It was when Edward Shanahan, government agent, was shot to death by Durkin that the latter sprang into notoriety. Virtually the whole police force of Chicago and all the federal agents in this area took up the hunt.

Working in packs, the officers dashed from spot to spot on false tips. Durkin laughed at the hunters. He stayed in and around Chicago most of the time. He had shaved off his mustache, for that was the most important clew to his identity.

One night he stood in a crowd in the loop watching police raid a motion picture house where he was supposed to be present. At another time, while in a cigar store, he heard Durkin had been surrounded in a house, and he ran over to see the fun.

It was a woman, Betty, who betrayed him, perhaps unwittingly, into the second trap, from which he shot his way to freedom. The night of Oct. 27 Betty and Durkin drove up to the home of Betty's uncle, Lloyd Austin. When they entered the darkened living room, several policemen, armed with shotguns and revolvers, ordered Durkin to surrender. Durkin whipped out a revolver and blazed away

as the police opened fire. He leaped down a stairway and escaped. Sergt. Harry Gray was mortally wounded and Austin fell with a load of buckshot in his head. He died later.

Durkin stayed around town a little longer. He mistrusted Betty. Then he recalled Irma Sullivan, the pretty little 18-year-old girl from Cornell, Ill. He had met her once, liked her, and he knew she liked him.

So he went to Cornell, paid impetuous court to the village blacksmith's daughter, and a day later they went to East St. Louis, where they were married. Then followed the trip to the coast, the motor tour, a supremely happy honeymoon for the country girl, who said she did not know until after the marriage that her husband was the hunted Martin Durkin, although he told her his name was Durky.

Today Irma, in police custody, announced that she would cling to her husband.

Betty, the city sweetheart, was fighting, meanwhile, for a look at the girl who had taken Durkin from her. She broke through a crowd of police as Irma passed.

"Gee, she's a beauty, isn't she?" Betty cried as Irma's pretty face and shapely head appeared from the luxurious fur wrap Durkin had purchased for her. Betty is hoping Marty will come back to her.

The ominous figure of State's Attorney Crowe shadows Durkin.

"Durkin will hang," Crowe said. "He has confessed to killing Shanahan. If that isn't enough, there is the killing of Sergeant Gray."

The humor enters with the ever-present flappers. They were there in hundreds when Durkin was led through the railroad station. They cheered him and threw flowers. Today mash notes by the scores are arriving at police headquarters.

"That's a laugh," Durkin said, grinning broadly, when he was told of the raft of notes of love and sympathy.

Although the news writer guards against anything that appears to have anti-social consequences, it is not his duty to preach sermons or to point morals. He does not write in order to uplift his readers, but to inform and entertain them. The following story is an attempt to rewrite the foregoing story in

the manner of pointing a moral. Its departure from the essential truth of the narrative, however, is not any farther than was the deviation in the original story, because many facts prejudicial to the principal character were not included in the original story.

A broad grin spread over the handsome face of Martin Durkin, confessed slayer of Edward Shanahan, government agent, and Police Sergt. Harry Gray, when told in his cell today of the raft of mash notes addressed to him by flappers and delivered at headquarters.

The arrogant grin, thinks State's Attorney Crowe, is due to fade ere long.

"Durkin will hang," said Crowe today. "He has confessed to killing Shanahan. If that isn't enough, there is the killing of Sergt. Gray."

Durkin's arrogance shields him now against worry and he brags to the policemen who surround him, but State's Attorney Crowe thinks he will finally curse the arrogance that has been his downfall.

The self-complacent bandit who sits in a cell at the county jail is what the psychologists call a "type," and his mental make-up traces back to his early childhood. Durkin, the psychoanalysts would say, was once like every other baby—wholly selfish. Every baby at birth is selfish—all ego. Every baby, say the psychologists, passes through the stage of "narcissism," a term derived from the classical legend of the egotistic Narcissus, who looked in a pool of water and fell in love with his shadow.

Durkin's "type" is the kind that never grows out of the "narcissist" stage. Their ego never "divides," and they always remain selfish and arrogant. They never develop a conscience to warn them that they will hang.

Durkin took to crime early. Automobile stealing was his chief occupation. Leading a gay, care-free life, he spent money freely, pursued love affairs and finally selected Betty Andrews, 23, as his "steady." Police say Durkin had previously married Sadie Stroka and Ruth Fieback, but Betty Andrews, whom he never married, gave birth to a boy who, she says, is Durkin's son.



Successful, because automobile stealing was an easy crime to "get by with," Durkin shot and killed Edward Shanahan, a United States secret service operative. He fled but not for long. While scores of Chicago police and government agents sought him he remained in the city and arrogantly laughed at them.

One night he and Betty went to the home of Betty's uncle, Lloyd Austin. They were greeted by armed policemen in a darkened room. Durkin drew his revolver and fired, ran down a stairway, and escaped. Behind him he left Sergt. Gray and Betty's uncle, both mortally wounded.

Durkin's arrogance prompted him to remain around Chicago. Most men, after three killings, would have fled—fled in any direction, driven by a fear-stricken conscience, warning, "you will hang." But Durkin was a "narcissist" type. His arrogance made him distrust even Betty Andrews. So he looked up Irma Sullivan, an 18-year-old girl from Cornell, Illinois. He had met her once, liked her, and knew she liked him.

He dropped down to Cornell, paid court to her, and a day later took her to East St. Louis. There they were married and started for the coast by automobile. Irma was quite happy, for she didn't suspect, she says, that Martin Durkin, fugitive, was the man she married as "Martin Durky."

Today, Irma, in police custody, announced she would cling to her husband. Betty, though Durkin deserted her and the child which she says is his, is not vindictive. But she says she is "through with" Durkin.

Other women, or rather girls, are attracted by the handsome and notorious gunman. Yesterday when Durkin was led through the railroad station he was cheered by scores of "flappers"—the pitiable dumb children of the cheap films, the cheap fiction, the cheap dance halls, and the miserable families of a big modern city.

The "flappers" yesterday threw flowers to Durkin and today they sent him mash notes. Tomorrow they will be the mothers of men of the Durkin type—arrogant "narcissists" who never develop a conscience to warn them "you will hang."

protect themselves as much as possible in anticipation of damage suits, are reticent about furnishing information about accidents, and they sometimes even try to hinder reporters who are investigating accidents. In such cases, the reporter must be resourceful. The best tactic is to obtain as much information as possible from other sources and then to inform the reticent official that in as much as the information already obtained is going to be published, it would be well for him to make a statement for publication in order that the story will not be unfair to his company.

Reporters cannot be too careful in reporting accidents. Nearly every serious accident results in a lawsuit or in the filing of a claim by the injured person. Untrue or unfair reports of accidents may affect the judgment of juries or of the public, and thus cause an unfair assessment of damages or a loss of trade to a retail store or public utility. Accidents are difficult to report because reporters must rely upon the information furnished by the police and by eyewitnesses, and these accounts frequently differ in many important details. In the matter of automobile accidents, especially, reporters should be careful to report correctly the driver's or owner's name and make every effort not to exaggerate the extent of the injury or damage. Newspapers, in reporting accidents, frequently protect their reputation for accuracy by quoting the eyewitnesses directly instead of reporting the accident in the manner of an omniscient observer, and by using such expressions as "*A car said to have been driven by John Doe. . .*"

Do you think that the person who wrote the following news story witnessed the accident?

Mrs. Margaret Kipchak arranged the first meeting with her husband in four years today, but she invited a third to attend the reunion, and that one was death.

Kipchak, a taxi driver, was at his stand today at 125th street, when a woman with a crimson hat was seen to climb hesitantly to the rail of the Riverside drive viaduct, 115 feet above. Then the hat disappeared. Fear for the moment had conquered resolve.

Again the gay hat appeared above the rail and again it disappeared. A crowd gathered in the street and shouts were raised to attract the attention of pedestrians on the viaduct who might prevent the impending tragedy.

But a third time the flaunting crimson hat rose, and this time the trim figure of a woman could be seen balanced on the rail. Briefly she looked down at those below her, her body stiffened, and she plunged headlong.

A patrolman turned the body over in the street and Kipchak pressed forward with the others for a glance at the pathetic form of this woman who had so wanted and so feared to die.

"That is my wife," he cried, and fell unconscious.

When revived he told police that five years ago he and his wife, then but 17 years old, had separated. For four years, he said, he had not seen her or known where she was. She had been a sufferer, he reported, from melancholia, and this, he believed, must have led her to decide to end her life.

Since the police reporter covers only the "spot" news that originates in hospitals, it is necessary that other reporters obtain feature stories. It is the policy of newspaper editors to keep in touch with hospital superintendents and attendants and with surgeons, and from time to time to send reporters on special assignments to hospitals. Stories about interesting operations and treatments, and about remedies developed by the research of surgeons on the hospitals' staffs may be obtained from every hospital of importance.

(1)

For the second time within a week a surgical operation was performed yesterday in Miami for which hypnotism furnished the only anæsthetic. Miss Edna Jameson was the patient, Dr. Cornell Walsh, of 2450 Constance avenue, the surgeon, Packard Hospital the locale, and Manfred R. Mantzen the hypnotist. The operation, which was for hernia, was declared entirely successful.

Despite its success in minor cases, hypnotism will never come into general use as a substitute for anæsthetics, it was

with his fellow newspaper workers, but associates instead with a class of persons whose associations, in turn, are for a great part with criminals. Policemen, in order to catch criminals, have to know them thoroughly and also have to know a number of "stool pigeons." Police reporters, too, must know something about the criminal world; consequently, their chief acquaintances in a professional way are crooks and "dicks."

On the other hand, the job of the police reporter is not to be shunned. It is the police reporter, after all, who writes the most dramatic stories in the paper and who has the best opportunity to adapt narrative technique in news writing. Many fiction writers who have been police reporters have testified to the value of that kind of journalistic training. The police reporter at the central station gets much satisfaction, also, out of using his wits in connection with investigations. At least a short period as a police reporter is almost indispensable to the newspaper man who expects to become an editorial executive, and no novice should shun the assignment during the first year of his career. Ordinarily, however, the police reporters who choose to remain in that type of newspaper work are men who have a flair for adventure or for crime detection; most of them are distinctly men of action rather than of scholarship.

### EXERCISES

1. In the news story on pages 285-286, point out the adjectives which (a) exaggerate; and (b) which induce sympathy for the criminal.
2. Comment upon the following statements in the story on pages 285-286: "The ominous figure of State's Attorney Crowe shadows Durkin. . . . 'Durkin will hang,' Crowe said. 'He has confessed to killing Shanahan. If that isn't enough, there is the killing of Sergeant Gray'"
3. Comment upon the following Associated Press dispatch: ". . . And when the news came that Hickman was in jail at Pendleton, Oregon, he was closeted first with the city editor of the *Pendleton East Oregonian*, Pendleton correspondent of the Associated Press, and a court reporter, who obtained the confession."
4. Comment upon another excerpt from the same dispatch: "Newspaper reports of the search for William E. Hickman

caused him to flee from San Francisco to Oregon, he said in his confession Friday, not aware that he was under the network of the Associated Press wires, with news of the man-hunt speeding 24 hours a day to every section of the country. Details of the crime which followed the first news carried by the Associated Press out of Los Angeles and which included a wealth of description of the killer, all served to set off the alarm in the Pacific northwest. Officers who eventually caught him said it was the details of the Associated Press news report carried into East Oregon that put them on the track."

5. After analyzing the news stories pertaining to the "Gordon murder mystery," on pages 269-276, draft a list of the rules of evidence a newspaper reporter should follow in reporting crime stories.
6. Criticize the following excerpts from news stories:
  - (a) "... Meanwhile inspectors from the district attorney's office began a hunt for two more persons on accessory charges. Their names were not divulged, but it is understood that one was a doctor believed to have aided in dismembering Miss Green's body and the other was the man who drove the car that took its parts to the cemetery."
  - (b) "... He ('Bum' Rodgers) is now believed to be hiding near Atlantic City with nine members of his gang."
7. Comment upon the following case: A police reporter who desired to know intimate details about the family life of a principal in a crime persuaded a detective to go to the woman's home and question members of her family from a list of questions prepared by the reporter. Answers to the questions were not calculated to aid the police in their investigation but to provide the reporter with intimate details of the woman's life. The detective, however, told the members of the family that it was necessary for them to answer the questions.
8. Comment upon the following case: A bank cashier was a fugitive from justice on a charge of embezzlement. A newspaper reporter learned that he was registered at a local hotel under an assumed name. He went to the man's room and questioned him, afterward returning to the newspaper office and writing a news story based upon the interview. He did not notify the police, for to have done so would have permitted the opposition newspaper to obtain the news. When the police read the news story on the following morning they hurried to the hotel, but the defaulting cashier had fled.

tional law enforcement officials who are derelict in their duties are sometimes subject to removal by the Governor.

**Functions of County Government.**—Ordinarily, the functions of county government are as follows: (1) To assess and collect taxes for both state and county purposes; (2) to enforce the laws of the state; (3) to record important documents; (4) to construct and maintain highways; (5) to provide poor relief; (6) to administer the rural schools; (7) to supervise nominations and elections; (8) to guard the public health.

**Taxation.**—Once a year a county official, usually called the Assessor or Tax Commissioner, places a valuation upon all tangible and intangible property within his county.<sup>1</sup> In some states, the citizens voluntarily appear before the Assessor or mail a schedule of their property; in other states, the Assessor makes a personal visit to the taxpayer to obtain his schedule. After the assessment has been completed a board—usually called a Board of Review, a Board of Equalization, or a Board of Tax Appeals—sits in the County Building for about a fortnight to hear complaints of taxpayers and, accordingly, to make adjustments in the valuation of the individual assessments.

Not infrequently the total assessed valuation of a county is deemed insufficient by the State Tax Commission, and it orders the county Board of Review to increase the total valuation to a specified amount.

The State Tax Commission today ordered an increase of two and a half million dollars in the assessed valuation of Clark county, Tax Commissioner Thomas B. Wintersmith announced.

Mr. Wintersmith has notified the Board of Equalization to assemble here next Wednesday to make distributions of increase in the individual assessments. The action of the State Tax Commission means that Clark county taxpayers must pay taxes upon a valuation of \$74,435,000.

After the completion of the Board's work, tax bills are sent to the individual taxpayers. In some states payments are made

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<sup>1</sup> An income tax is assessed in several states in addition to a general property tax.

to a Tax Collector or Treasurer, and in a few states to the Sheriff.

County Treasurer Frank Case today denied that he is delaying the mailing of tax bills until after the April primaries. It was charged yesterday by the Wood-Markham faction of the Republican party that the receipt of this year's tax bills will cause a storm of protest from the voters that will cost many of the Wilson faction officeholders their jobs.

Mr. Case said today that the Board of Review had not been able to get the assessment rolls to him in time for him to make out the bills before April 12. Inquiry among members of the Board of Review revealed that they had not begun their hearings as early this year because of the failure of the Assessor to furnish them with the original schedule of assessments.

Notwithstanding the lateness with which the bills will be mailed to taxpayers, the penalty of five per cent will be added to the bills of taxpayers who have not paid their taxes by June 1, the county treasurer declared.

In addition to receiving taxes, the Treasurer, at periodic intervals, makes settlements with the State Treasurer or State Auditor, paying over to him the state's portion of the taxes collected.

What is probably the largest sum of money that will be paid out by Washington county this year was today forwarded to the state treasurer by County Treasurer Warren Washburn. The check was made out for \$100,198.54.

The total figure represents the amount due in state taxes, state fines, and dog license fees. More than 95 per cent of the total is for state taxes. Only \$4,194.28 represented state fines. Dog license fees amount to \$661.35.

In several states the officials who assess and collect taxes are compensated by a percentage system which has made the offices exceptionally lucrative. The result is that nearly all the county politics centers in the offices of the assessing and collecting officials, a fact that it is well for newspaper reporters to remember.

The County Treasurer, in many states, has other fiscal duties in addition to receiving taxes and settling with the state. He is, for example, custodian of the county funds, he negotiates loans made by the county, and pays off loans made by the county.

County Treasurer E. S. Farrington today redeemed \$65,000 of Valley county refunding bonds. Inasmuch as the issue was optional and the sinking fund was in excellent condition, it was possible to save the county \$3,250 in interest charges. The total saving is \$16,791.45, which is the amount of interest payments that would have accumulated had the bonds been allowed to mature in 1953.

Last month \$6,000 worth of school bonds were paid off by the County Treasurer.

**Law Enforcement.**—Only a few states maintain a system of state police, and even these states place the principal burden of law enforcement upon county officials. Because the degree of crime and violence in non-urban areas is low, except in the mining regions, the county police system is of simple organization. A small corps of officers ordinarily suffices. It usually consists of the Sheriff and a few deputies, a Prosecuting Attorney, a Coroner, and a Jailer. With the advent in recent years, however, of bootlegging and hi-jacking operations and an increase in bank robberies, counties in several states have established an organized system of county police and have employed county crime investigators. County dance hall inspectors have also been added to the county enforcement machinery in some states because of the advent of road houses and rural dance halls.

**The Sheriff.**—As the conservator of peace within the county, the Sheriff is comparable to the Chief of Police of a city. Historically, the Sheriff [shire reeve] was a Judge as well as an enforcement officer, being sent by the King to the shire to hold court. Today, however, he is only a ministerial officer of the state courts. He preserves order in the court room, summons jurors, subpoenas witnesses, serves warrants, collects money due under judgments, and seizes and sells property to satisfy judgments. In many states the Sheriff is also the Jailer and, in a few states, he hangs or electrocutes criminals condemned to



death. He is also, in some states, the Tax Collector for the county, as was his predecessor in the time of William I.

The Sheriff usually maintains an office in the County Building, but in states where he is also the County Jailer, his office and home are in the county jail building. He is assisted by a staff of deputies who spend most of their time serving legal papers in various parts of the county. The newspaper reporter calls upon the Sheriff two or three times a day to learn of arrests and of crimes committed in the county. In many counties, the Sheriff and his deputies do not remain on duty at night, as city policemen do, and the reporter must therefore visit or telephone the Sheriff early in the morning to learn about events of which the Sheriff was informed at his home during the night. In counties that employ highway policemen, the reports of these policemen are made to the Sheriff, and are of frequent value to the newspapers when automobile accidents happen.

The man who occupies the office of Sheriff is not, as a rule, competent as a crime detector, and many states are realizing that the burden of law enforcement ought to be placed upon a specially trained and well-organized system of county or state police.<sup>2</sup> States which are organizing a system of county police are, however, employing special county investigators, who are attached to the Sheriff's office.

John F. Pendleton, farmer on the River Forest road, yesterday found a butchered pig hanging in his barn. He summoned County Investigator Phil Murphy, but before the officer arrived a neighbor called to claim the pig. Mr. Pendleton, however, refused to release the carcass.

Upon the arrival of the county investigator, an inquiry was started to determine how a pig came to be hanging in Mr. Pendleton's barn without his knowledge.

Considerable difficulty was experienced in discovering who owned the pig until another neighbor revealed that the porker really belonged to the farmer who claimed it. Mr. Pendleton, it appeared, had a watch dog about which he had frequently

<sup>2</sup> An excellent study of the Sheriff's office is contained in the *Missouri Crime Survey*, pp. 58-76. See also, *Reports of the Illinois Association for the Administration of Criminal Justice*.

boasted. The two neighbors, in order to convince him that the dog was not as good a guardian as he thought, sneaked into his barn Wednesday night and placed the slaughtered pig there. They asserted that the dog made no effort to molest them.

*The Prosecuting Attorney.*—A prosecuting officer, usually called the County Attorney, Prosecuting Attorney, County Solicitor, or District Attorney, maintains an office in the County Building. His duty is to prosecute all felonies committed within the county.<sup>3</sup> The Prosecuting Attorney coöperates with the Sheriff's staff and the city police in the investigation of crimes: he files informations, and he prosecutes defendants in the local state courts. Although he is most active during the term of court, his office is visited daily by newspaper reporters who wish to know about crimes that are being investigated and about informations that have been filed.

County Attorney Maxwell Davies said today he had not decided definitely whether he would file informations charging the proprietors of three motion picture theatres with violation of the Sunday closing laws.

Mr. Davies said he had been in conference today with two of the theatre managers in an effort to obtain their promises not to open their theatres next Sunday.

The county attorney left no doubt, however, of his intention to require obedience to the statute passed by the last session of the legislature. Unless the proprietors voluntarily agree to close their theatres, informations will be filed, he said.

In addition to acting as prosecutor, the Prosecuting Attorney is usually the legal adviser to the county officials and is con-

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<sup>3</sup> In some states the real prosecuting officer is not an official of the county but a Prosecuting Attorney elected by the voters of a Circuit Court district, comprising several counties. For, in many states, the county is not the basic *judicial* unit of the state although it is the basic *administrative* unit. In such instances, a County Attorney also is elected by the voters of each county, but he usually conducts only preliminary prosecutions of felony cases, files informations, prosecutes misdemeanors, and during the session of Circuit Court assists the Prosecuting Attorney of the judicial district. For a description of the latter office see Chap. II.

sulted in important fiscal and other business matters. In this respect he is like the Corporation Counsel of the city government.

County Attorney Ben Backus today furnished the county board of education with an opinion that neither the board nor the county superintendent of schools could discharge a teacher appointed in an independent graded school district by the board of that district.

The opinion was requested in connection with public charges made last week against Wilbur Moffett, principal of the Trumbull graded school. The trustees of the Trumbull school, an independent district, had refused to take action against the teacher and a petition had subsequently been handed to the county board of education by Trumbull citizens who desired the discharge of the principal.

*The Coroner.*—A state official who is elected by the voters of a county but who has close relations with the law enforcement officers in both county and city government is the Coroner. In a large city he is assisted by one or more deputy coroners, a Coroner's Physician, and a Superintendent of the Morgue.

The Coroner's chief duty is to investigate causes of violent death and to attest to a magistrate any case that appears to involve a felony. When the police report a homicide, a suicide, or an accidental death, the Coroner investigates to determine the true cause of the death and, in some cases, the person or persons responsible for the death. Sometimes, the Coroner or his aides merely "view" the corpse and order it sent to the mortuary. Sometimes, the Coroner orders one of his aides—the Coroner's Physician—to conduct an *autopsy*, that is, a dissection of the body.

In many cases the Coroner conducts an *inquest*. He subpoenas witnesses and summons jurors. The jury reaches a verdict after hearing the testimony of the witnesses. The hearings are usually held in the Coroner's office and are presided over by a Coroner's Deputy who is usually an attorney at law. Frequently, too, the Prosecuting Attorney attends the inquest. The verdict is returned in writing and is attested by the Coroner. If the jury

decides that a felony has been committed in connection with the death, the finding is certified by the Coroner to a magistrate who has authority to issue warrants of arrest. A typical verdict reads: "Frank Davis came to his death from a gunshot wound from a .45 calibre revolver in the hands of Michael Polakowski." Whenever the jury is unable to reach a verdict as to the true cause of a death or the identity of the person who is responsible for a death, the finding is called a *non-committal* verdict, or an *open* verdict. The Coroner has a wide scope of authority in inquiring into the cause of deaths, and may even direct that the body of deceased persons be exhumed.

Deputy coroners yesterday went to Evergreen cemetery to open the grave of Mrs. Anne Wilson whose death on June 4 is being investigated at the instance of relatives who are contesting her will before Probate Judge Clarence Uhl.

Forgery and fraud have been charged in the present suit, and a sister, Mrs. Lyle Montgomery, charged that Mrs. Wilson's death may have resulted from poison.

The theory of the Coroner's inquest is that it brings to bear immediately an investigation in connection with crimes which involve death, and deaths which may lead to lawsuits, such as those due to wrecks. Actually, the Coroner's inquest does not aid in the administration of criminal justice, and has been abolished in several states. Instead, a Medical Examiner for each county is appointed to examine the bodies of persons supposed to have died as the result of violence. If crime is suspected or revealed in connection with a death, the Examiner reports to the Prosecuting Attorney who has a magistrate inquire into the cause of the death. In other states, officials known as State Pathologists and State Toxicologists perform examinations on dead bodies at the request of local officials, the Toxicologist examining only those cases in which poisoning is suspected.

Henry McKay was definitely cleared today of any suspicion that he may have been responsible for the death of his wife, Alice, by the report of Dr. Andrew Horner, state toxicologist, that no trace of poison was found in the viscera of the young woman, who died on Jan. 3.

In his report to District Attorney Hilary Webb, Dr. Horner said that in view of the fact that no trace of poison was

found, Mrs. McKay had apparently died from natural causes. The autopsy showed that she had died from pneumonia.

In many states the Coroner is empowered to fulfill the duties of the Sheriff when that official is disabled or disqualified; when, also, it is necessary that the Sheriff be arrested, the person who has authority to make the arrest is the Coroner. Gradually, however, the Coroner is being divested of the ministerial and judicial powers that he inherited from medieval times.<sup>4</sup>

**Records.**—The state, as a guardian of the rights of property, has in all modern times provided a system for recording for perpetual memory and testimony the ownership of title to real property. In every County Building, therefore, is a fireproof office in which written instruments are recorded and preserved for all time. Any person who desires to make himself secure in his title to property acquired by purchase or inheritance takes the written instrument that certifies his ownership to this office where, upon payment of a fee, it is copied into a book, indexed, and filed. The instruments most frequently recorded are warranty and quitclaim deeds to real property, wills that have been admitted to probate, mortgages, trust deeds, and affidavits. The official who has charge of the recording office is usually called the County Clerk or the Recorder. In some states he is called the Register of Deeds, and in some states there are two recording officials, the County Clerk and the Register of Deeds.

*The County Clerk.*—In most states the County Clerk has other duties than the recording of written instruments. He is the clerk of the governing board of the county; he issues hunting, dog, automobile, and marriage licenses; he accepts nominating petitions, supervises the printing of ballots, and receives election returns; he is Clerk of the Probate Court; he records articles of incorporation and receives applications for corporation charters.

The County Clerk's office is an important news source. Business men are especially interested in all transfers of property, and readers generally are interested in wills, marriage licenses,

<sup>4</sup> An excellent study of the Coroner's office is contained in the *Missouri Crime Survey*, pp. 77-110.

and other such human and business statistics. Reporters on small newspapers usually visit the County Clerk's office twice daily. The first visit is for the purpose of obtaining all the routine news available and the second—made a few minutes before the office closes for the day,—is for the purpose of obtaining important information placed in the records subsequent to the first visit. Newspapers in large cities ordinarily employ some subordinate clerk in the County Building to furnish them every day with a summary of all the routine statistics of the County Clerk's office, and require their own reporters to obtain only important information, such as the news about a large or unusual property transfer. This kind of reporting is not difficult, but it demands great accuracy. This work does not usually require resourcefulness except that sometimes it is difficult to learn the consideration involved in a transaction, as when, in warranty deeds, the grantor or grantee, for purposes of concealment, names the consideration as "one dollar and other valuable considerations." This does not, however, conceal the amount from the reporter, for he can estimate the amount by calculating the value of the documentary stamps attached to the deed.

The following news stories illustrate the character of news that comes from the County Clerk's office:

(1)

Sale has been made of the Howard Material company, which operates the largest gravel pits in Rye county, to C. A. Morris & Company, Chicago, it was revealed in the filing of a deed in the office of the register of deeds today.

The property comprises about 200 acres. It is in sections 28 and 21 in the town of Mays, just north of Perryville, along the B. L. & T. railroad tracks. The consideration was \$16,000.

(2)

Application for a charter for the Inter-City Trucking Company, with \$10,000 capital, was filed yesterday in the office of County Clerk John Collins. The incorporators are L. O. Lamb, T. A. Scuggs, H. H. Brocklin, Edward G.

Marshall, and J. R. Hester. The company will conduct a general trucking and hauling business at 312 East Benton street.

## (3)

To spend their declining years together, P. A. Ketchum and Matilda Ketchum were remarried yesterday by Judge J. L. Honnoll after a separation of twenty-four years. The old couple came here from Toledo and obtained a marriage license from County Clerk Roy T. Underwood.

"We were boy and girl sweethearts," the 71-year-old bridegroom said yesterday in the Clerk's office. "We were married in Dayton in 1880, but gradually drifted apart after our daughter was nearly grown. Mrs. Ketchum got a divorce in 1903.

"We never lost track of each other and just lately decided we could spend our declining years happier together than separated."

Mrs. Ketchum is 67. They will make their home in Fremont.

## (4)

County Clerk Quincy Small today explained why automobile owners must answer certain questions in the presence of a notary public in order to obtain a license. Many auto owners have complained about having to pay the notary fee of fifty cents.

The questions are: "Were you the owner of this motor vehicle on the first Monday in March, 1927? If so, has the 1927 property tax on this motor vehicle been paid? If not paid, are the taxes a lien on real estate?"

It is necessary that these questions be answered in the form of an affidavit because the law specifies that the county treasurer shall submit a list of automobile owners in his county on which taxes are delinquent and which are not a lien against real estate, to the state Register of Motor Vehicles who has power to withhold the license until the tax upon the machine has been paid, County Clerk Small said. He received a letter of explanation from the state register yesterday.

Some of the best news stories that come out of the County Clerk's office, however, are those which are not especially based upon spot news, but which concern statistics over a period of time, as for example, a comparison of the number of marriage licenses issued in June of one year with the number issued in June of the preceding year, or the number of automobiles and trucks registered in the county, or the number of hunting licenses issued during the open season.

**Highways.**—Next to law enforcement, the most important function of county government, in the minds of the citizens of a county, is the construction and maintenance of highways. It is the greatest problem of county government, and in recent years has demanded more technical and fiscal ability than the ordinary county official possesses. Because of its importance to all citizens it is of extraordinary importance as news. In progressive states the chief highways are now constructed and maintained by the State Highway Department, but scores of side roads and a few other more important county roads remain the responsibility of the county.

The determination of highway policy and the details of financing, routing, and resurfacing of county highways are tasks that the governing body of the county directs, but the administration of highway funds and the technical supervision of construction and repair are in the hands of an official usually called the Road Engineer or the Highway Commissioner. He is not ordinarily a constitutional officer but is appointed by the governing board of the county. Since it is he who is in closest contact with highway operations, he is the best source of news relating to county highways. From him the reporter learns about the progress made in constructing or repairing certain roads, about plans made to close temporarily certain roads to travel together with directions to motorists as to temporary routes to follow, and about the condition of certain roads following snowstorms and severe rainstorms. Because the Road Engineer is the only road official who maintains an office in the County Building, the reporter obtains from him news concerning highway policy that the county governing board passes upon in its regular sessions.



Good weather during the month of June enabled the county to push forward its 1928 program as much as ten days, Road Engineer George Harrod said yesterday.

Thirty-five miles of road were either constructed of concrete or resurfaced with macadam, and almost a hundred miles were treated with oil during June, his reports show. Should the good weather continue during the greater part of July, the county highway committee will ask the Board of Supervisors for authority to extend the program so as to make 1928 a banner year in road construction and repair, Mr. Harrod said.

The Marshfield road, of which ten miles are being constructed of concrete, will be opened to the public before July 4, provided that work on the new bridge over Millett creek progresses at the present speed. The opening of this road will save travelers a five and a half mile detour between Marshfield and the county seat.

Inasmuch as the county authorized the construction of only eighteen miles of permanent paving for this, the third year of its concrete highway program, no effort will be made to expand this program.

The road engineer believes that any extra time gained over the scheduled program ought to be used to push forward the work of resurfacing some of the side roads that are reported in poor condition during the winter months.

**Election Machinery.**—The conducting of state and county elections in most states is vested by statute in an Election Commission which ordinarily consists of two commissioners, one representing each of the two major parties, and a third *ex officio* member, usually the Sheriff, County Judge, or County Clerk. Prior to each primary or general election the Commission appoints election officers for each precinct and arranges for polling places. After the ballots have been cast they are counted and tabulated by the precinct officers and returned to the Election Commission, which officially counts and tabulates them. The Commission then awards certificates of election to the successful candidate for county office and, in the case of candidates for state offices, certifies the official vote to the Secretary of State.

The functions of the Election Commission are more in the nature of supervision than of administration of elections. The function of having the ballots printed is ordinarily exercised by the County Clerk and the function of delivering ballots and ballot boxes is exercised by the Sheriff. Filing and recording of petitions and other legal papers connected with nominations for office is also the duty of the County Clerk.

News of electoral activities is seldom of interest except during the time shortly before and immediately after elections. From the County Clerk the newspaper obtains, as they are filed, the names of candidates for county office who enter or withdraw from the contest. News regarding the time and place of registration is also obtained from the County Clerk, as are the names of precinct election officials, the location of polling places, election returns, and the amount of money expended by candidates.

The following news stories are examples of the kinds of news obtained from the County Clerk as regards elections:

## (1)

John L. Taylor, 1254 East Washington avenue, a real estate dealer, filed nomination papers yesterday with the county clerk. He is a candidate for county commissioner. Other candidates who have filed for county commissioner are Fred W. Leiter and O. C. German.

Mr. Taylor's petition bore the names of 346 residents of Winchester, half of whom live in the third ward.

## (2)

County Clerk Charles Culbertson denied today that he permitted two other candidates to file nomination papers for coroner prior to A. H. Lutz although Mr Lutz was first in line at the county clerk's office.

Mr. Lutz declared yesterday in an interview that he would contest the right of the other two candidates to first and second place on the ballot. The other candidates are Karl Cady and E. J. Mason.

The charges by Mr Lutz are the first of their kind to be made in Willis county since the new election laws were passed. Previously, all candidates for an

On May 12, examinations will be given in geography, history, language, and reading, and on the following Saturday, examinations will be given in arithmetic, civics, penmanship, physiology, spelling, and agriculture.

Students who intend to be graduated and who have moved into this county this year should make certain that their teachers have obtained their previous standings from the county in which they formerly resided, it was stated today at the county superintendent's office. This is necessary in order to make graduation possible.

**Health.**—The guardianship of public health in the county is entrusted to a County Board of Health which is made up almost entirely of physicians. The executive work of the Board is entrusted to an official usually called the County Health Officer, who is always a physician. In some counties where the county seat is of considerable size the County Health Officer is also appointed as City Health Officer. Progressive counties employ, in addition to the Health Officer, a County Nurse and, sometimes, a Sanitary Inspector; in such counties the officials and employes of the Board of Health are usually provided with office and laboratory space in the County Building. The work of the Board of Health is chiefly of a preventive nature: the Board has power to quarantine persons infected with contagious diseases and to close schools when epidemics are existent or are threatened. In well organized public health work the staff gives physical examinations to school children, issues publicity of an educational nature, provides free treatment for persons infected with the social diseases, and maintains a "pest house" for the confinement of persons infected with certain contagious diseases. The public health service is a source of news at all times, but most often when contagious diseases are prevalent or are threatened.

(1)

Residents of the Bedford neighborhood are warned that they ought to boil all drinking water during the period of the next few days in an announcement made yesterday by Dr. K. J. Knox, County Health Officer.

Seven cases of typhoid fever have been reported by physicians in Bedford during the past ten days, Dr. Knox said.

The diphtheria epidemic has run its course in this county and parents need have no fear in returning their children to school, a second announcement declared. Altogether, less than a score of diphtheria cases were reported in April and only one school was required to close, Dr. Knox said.

## (2)

The shepherd dog killed last week on the Warren Miles farm near Jonesboro was infected with rabies, Milton Boyd, county sanitary inspector, announced yesterday, following receipt of a report from the State Laboratory of Hygiene to whom the dog's head was sent.

Albert Graves, a farm hand on the Miles farm, shot the dog after it had frightened children passing on the road.

**Poor Relief.**—Care of indigent persons is universally one of the functions of county government. In some states the care of the insane and the feeble-minded is also regarded as a function of county government, but the state ordinarily assumes the care of such defectives because of the necessity for scientific treatment. The county government, however, provides a poor house or poor farm to which indigent persons are sent on the order of the County Judge or other chief official of the county. A Superintendent or Keeper of the poor farm is appointed by the county governing board. Seldom is the poor farm a source of news except for the infrequent feature story concerning some of the inmates.

In a Wayne county poor house sits a soldier of fortune, now minus the fortune, who can authentically lay claim to the following experiences: He saw the charge of the Light Brigade, he was nursed by Florence Nightingale, he was a gun runner for Garibaldi, he pulled the Empress Carlotta out of a ditch by her ankle, he was present at an Indian Mutiny. . . .

**Sundry Officials.**—Many counties have various full-time and part-time officials whose functions are less important than those

listed in foregoing sections. The County Surveyor is an adjunct of the court in determining the boundaries of real property in litigation. The Trustee of the Jury Fund is the official who pays jurors and witnesses who attend Circuit Court. The Humane Officer acts to prevent cruel treatment of dumb animals and children. He, of the three officers above mentioned, is the only one who is often a news source; he frequently provides feature stories.

Roland Magruder, of Prospect, must pay veterinarians' fees for shooting dogs if Humane Officer Donald McAllister is successful in prosecuting Magruder in Superior court next Tuesday.

The county humane officer swore to a warrant yesterday, charging Magruder shot two dogs which trespassed upon his property. The shots did not kill the dogs. The policy of the present humane officer has been to require offenders against the humane laws to furnish treatment when they have wounded animals, and he has not insisted upon fines being levied.

A County Agricultural Agent, whose salary is paid by the county and the federal government, is employed in many counties. He is a source of information as regards all agricultural activities in the county. His chief duty is to give counsel to farmers regarding the production and marketing of crops.

**The Governing Body.**—The supreme power in county government is the governing body of the county. It has control over county funds and county property and, in some instances, over certain county officials. The governing body has various names: the most frequently used are Board of Supervisors, Board of Trustees, and Fiscal Court. In states possessing township government the supervisors or trustees are usually elected from the different towns; in states that were settled early in the history of the country the members of the governing board are elected from specially designated districts; in a few states the county is divided into magisterial districts, and the justices of the peace who are elected from the various districts compose the governing body of the county. An innovation in county government is the commission form whereby a few com-

missioners are elected by the county at large; this method eliminates, in some measure, sectional jealousies from the discussion of highway policy. In most counties the presiding officer of the Board is chosen by the Board, but in many counties the County Judge is *ex officio* a member of the Board and acts as its President.

The county governing board usually meets once a month. Its chief duties are to vote a budget appropriating money for the construction and repair of highways and the construction and repair of county buildings. It also makes donations to hospitals and civic enterprises, establishes new branches of the public service, approves bond issues previously authorized by the voters, and awards contracts for construction and repair work. The following news story relates the actions taken by a typical county board:

In its final session of the year the Doan county board of supervisors yesterday took the following action:

1. Appropriated \$65,000 for highway work.

2. Appropriated, in addition, \$10,000 for keeping the roads open during the winter.

3. Voted, in addition, a special appropriation of \$15,000 for road dragging, apportioned on the basis of \$15 a mile in the cities and villages and \$600 to each congressional township.

4. Defeated by a vote of 19 to 8 the proposal to employ a county nurse.

5. Defeated by a vote of 22 to 5 the proposal to build a new educational building at the Fair Grounds.

6. Appropriated \$10,000 as a beginning toward a \$25,000 fund for the construction of a new county poor home, with the understanding that the balance would be raised later by a proposed bond issue to be submitted in April.

7. Increased the salary of the county engineer to \$2,600.

8. Authorized the preparation of specifications for the construction of a new garage for use by the sheriff's staff.

9. Accepted the resignation of Fred Prewitt as oil inspector, but postponed election of a successor.

10. Elected George Moore to the coun-

ty highway committee vice R. O. Riggs, deceased.

11. Adopted the report of the county engineer for the year.

12. Referred to the highway committee petitions for county aid from 20 towns and villages in the county.

13. Postponed consideration of construction of a new county workhouse.

14. Postponed approval of the sale of road bonds and ordered advertisement for new bids.

15. Awarded a contract to Leonard Derrick, of Duvall, for constructing the Rock Creek bridge on the Freeport-Morrisville road, on a low bid of \$3,786 65.

16. Appropriated \$425 for the purchase of 30 new bunks for the county jail.

### EXERCISES

1. List the activities of county government that are not peculiar to municipal government.
2. List the activities of municipal government that are not peculiar to county government.
3. Name the constitutional officials of your county.
4. Name the appointive officials.
5. What are the advantages of a commission form of county government made up of three commissioners elected from the county at large rather than from districts?
6. Draw up a proposal for submission to the state legislature providing for a consolidation of the duties of numerous county officials, reducing the number of officials by one-half.
7. Write an interview news story describing the operation of the office of County Attorney based upon an interview with that official in your county and upon a reading of Parts II and III of *Criminal Justice in Cleveland*.

## CHAPTER XII

### POLITICS

IMPORTANT newspapers employ political reporters who are experts in their field to the same extent that baseball reporters and financial reporters are experts in their special fields. During sessions of the state legislature and election campaigns the political reporter is an actual reporter of political events. He reports elections, registrations, conventions, caucuses, conferences, and public meetings. At other times he has a roaming assignment, and the stories he writes are known in the newspaper office as "dope." That is, he reports the impermanent political movements; he describes politics in flux. Such news stories deal with candidacies and probable candidacies, appointments and probable appointments, the alignment and realignment of political groups, the personalities of politics, and trends in public opinion.

In order to report political events and to describe political phenomena, the newspaper reporter must possess an adequate mental equipment. The requisite qualifications of a political reporter may be described as follows:

1. The reporter must understand the *métier of the politician*: he must understand how the professional politician goes about his business.

2. The reporter must be familiar with the operations of *party machinery* in his state; that is, the legal and quasi-legal rules which govern the methods of nomination and election and of party control.<sup>1</sup>

3. The reporter must have an *intimate acquaintance with the*

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<sup>1</sup> Because a discussion of national politics cannot be included within the scope of this chapter, the explanations are confined to the realm of state politics and the emphasis is upon local politics. The connection between state and local politics is close, but there is relatively little connection between state and national politics.



*personalities* in politics, knowing their power, ambitions, and degree of honesty.

4. The reporter must have a thorough understanding of the *economic and social issues* which underlie politics and the character of the *stakes* in the politics of his state.

#### THE NATURE OF POLITICS

Politics is an enterprise to which a limited professional class—the politicians—devote attention; only a small part of the electorate is interested in politics to the extent that the ordinary man is interested in sports and business. The politician is motivated by the desire to obtain, by election or appointment, a position in the government service, together with the power, prestige, and emoluments that accompany the office. Some politicians, however, are motivated by the desire to obtain additional monetary rewards by either the legitimate or the illegitimate appropriation of the public funds. Politicians, generally, are as honest as the ordinary business man; but because success in politics usually requires the application of a shrewdness that is unfamiliar to the ordinary citizen, and because of the adherence of the politician to certain party obligations and the support by the politician of certain dishonest candidates of his party, he is generally thought to be extremely dishonest.

The "Machine."—The personal success of a politician is dependent upon his coöperation with other politicians in a group or a party. The organization of the group or party is hierarchical, and is popularly called a *machine*. So great is the necessity for coöperating with the machine that the ordinary politician subordinates the conventional ethical criteria to the obligations that the machine puts upon him.

Modern governments do not usually function except by means of machines—either loosely or strongly organized.<sup>2</sup> Ordinarily, a government depends upon the existence of two machines, the machine which is in control of the offices, and the opposition machine which is desirous of obtaining control of the offices. The opposition machine is sometimes of a rather permanent character, as for example, the opposition party in the British

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<sup>2</sup> There are many exceptions, of course.

House of Commons, but it is frequently of a temporary character, as for example, the casual organization of politicians and private citizens who are mobilized during a municipal election campaign for the purpose of obtaining a "reform" administration.

The members of the ordinary machine are of two kinds, namely, the professional officeholder and the politician, and the private citizen who is obligated to the machine or to some member of the machine.

**The Profits of Politics.**—The professional officeholders and politicians in the machine are of two classes, namely, the holders of small offices who work for the machine in order to obtain appointment or election; and the so-called bosses who direct and control the machine so as to profit by holding offices of prestige or by obtaining lucrative favors from the government. The latter class, however, is frequently made up of professional politicians who do not hold office but nevertheless control the machine or a part of the machine in order to obtain favors from the government.

The big profits in politics accrue to the leaders of the machine in the following forms: contracts awarded by the government for materials, supplies, and the construction and repair of public works and public buildings, etc.; lucrative fees paid by the government for services rendered such as special attorneys', receivers', and experts' fees, and fees paid for furnishing official bond for the officeholders; money paid by law violators for protection from prosecution and conviction—usually protection of vice, gambling, and the sale of alcoholic liquors; money paid by public utilities for grants of franchise to which they are not entitled, or for permission to increase rates and fares; money paid for obtaining pardons and paroles; money paid for the purchase of offices; money paid for granting permits and licenses to those not entitled to receive them; money paid for obtaining reductions in the valuation of property for purposes of taxation or condemnation; and money paid for the passage or defeat of certain legislative measures affecting corporations. The acceptance of money by politicians as payment for services rendered—the so-called graft—is not a universal phenomenon

in politics. Of more frequent occurrence is the acceptance from privileged persons and interests of campaign contributions; this practice is not regarded by politicians as a downright dishonest one, but it is nearly as subversive of political morality as is the acceptance of money directly.

Fortunately, all machines do not profit by flagrant methods of dishonesty. Most machines exist by virtue of the control of patronage and the practice of petty graft. Some machines exist solely through the control of patronage. Since the end of the first decade of the twentieth century there has been a reformation in local politics and the profits from boodle have diminished to an enormous extent. But at present there are signs in many communities of a return to the flagrant practice of graft. The attitude of the ordinary politician toward the state is one of exploitation: he conceives the state as an institution he can turn to his own advantage. Private citizens, therefore, must be eternally vigilant.

**How Machines Work.**—Although the nucleus of a party organization consists of the professional politicians, many private citizens are enlisted to work for the machine. The private citizen who gives his allegiance to a machine is usually under obligation either to the machine or to a member of the machine. Politicians place private citizens under obligation to themselves by the following means: providing them with special police protection, or by assuring them of the ordinary police protection to which they by right are entitled but which they have failed to receive; obtaining for them immunity from prosecution in the traffic and misdemeanors courts; aiding them in their relations with the government, as for example, obtaining exemption from jury duty, helping in the filing of tax returns, and obtaining garbage removal and street repairs; forming social clubs, holding picnics, etc.; performing favors of divers kinds but of a private nature.\* The private citizen who is most often under obligation to the politician is the poor foreign-born resident of the city who is inarticulate as a citizen and unfamiliar with the complexities of government and private business.

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\* Ward and precinct leaders in an eastern city, in the winter of 1924 during a protracted coal strike, helped private citizens who lacked influence to obtain a supply of coal.

*Carrying the Precinct.*—In the hierarchical organization of the well-organized machine the lowest leader is the Precinct Committeeman. Each Precinct Committeeman has the responsibility for carrying his own precinct in the primary election. The method by which this is accomplished in one city, which is to some extent typical of the method in vogue in all cities where there are strongly organized machines, has been explained by Mr. Frank Kent in realistic terms.\*

The ordinary election precinct contains about 600 voters, Mr. Kent explains. If the strength is evenly divided between the two major parties, with a few voters in the various minor parties, about 250 voters are entitled to vote in each party primary. Of this total, 65 voters are sufficient to nominate the machine candidate. In the first place, not more than one-third or one-half of the eligible voters will participate in the primary—at the most 125. If the Precinct Committeeman can secure half of this number—65 votes—he will have carried the precinct. How does he secure them?

The Precinct Committeeman's own family has at least five votes. The two judges and the Clerk of the election, whom the Precinct Committeeman appoints and who receives \$10 to \$20 a day from the state, each control about five votes. Two or three "watchers" or "runners," who are paid out of the party's campaign fund, are employed and each of them is worth about five votes. The man from whom the polling place is rented contributes about five votes. In addition, there are a few city employes in each precinct—street cleaners, clerks, firemen, and the like—who were appointed at the instance of the Precinct Committeeman; each controls the vote of his own family. The total is easily 65 votes, enough to carry the precinct against a candidate who lacks an efficient organization. Add to this number of machine adherents the voters in the precinct for whom the Committeeman has done a favor—furnished bond, lent money, obtained the remission of a fine, protected from the police—and the total is overwhelming against the unorganized dissenters within the party.

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\* *The Great Game of Politics*, Chaps. I and IV. In scores of cities, there is only the semblance of a political machine.

*The Rôle of Gratitude.*—The city politician is more often regarded by the private citizen as a personal friend than as a public enemy, with the result that gratitude and obligation are frequently more potent factors in determining the condition of government than are the important issues and the character of the candidates. The only remedy for this condition is to convince the voters, through education in the public schools and elsewhere, that gratitude in politics is a "vice, not a virtue," and that "every man and every collection of men ought to be treated by us in a manner founded upon their intrinsic qualities and capacities and not according to a rule which has existence only in relation to ourselves." <sup>6</sup>

*Interest-Groups.*—The success of the machine, however, is not always contingent solely upon gratitude and personal obligation. Two other factors intervene that are sometimes more powerful, namely, the pressure of interest-groups and the appeal of ideas.

The independence of the politician, especially of the politician who ranks high in the organization, is limited by the pressure that interest-groups bring to bear upon him; some politicians, in fact, are veritable parasites clinging to the body of private business. Politics, being essentially a process in which groups and individuals attempt to make use of the state to their own ends, involves a constant competition, conflict, and accommodation of various material interests, personal ambitions, and ideas. There is, in politics, a continual push and resistance between groups with a constantly shifting resultant balance. The pressure of groups is transmitted through the politician and turns upon such phenomena as taxes, special privileges, and morals. The observable groups in local politics are paired—roughly—as follows:

Capital *v.* labor

Urban interests *v.* rural interests

Racial element *v.* racial element

Prohibitionists *v.* "liberals" and "wets"

Frequently each group is organized into a little political machine or pressure-group which brings pressure to bear upon

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<sup>6</sup> William Godwin, *Political Justice*, Bk. II, p. 199. Cf. also, Jane Addams, *Democracy and Social Ethics*, Chap. VII.

politicians and which aligns itself upon one side or the other in election campaigns. A few of these organizations are:

Capital: The Chamber of Commerce, the Retail Merchants' Association, the Manufacturers' Association

Labor: the trade unions and the federations of trade unions

Urban interests: the Tax Reform Association (favoring taxation of real estate instead of income); the Automobile Club (opposed to taxes upon gasoline)

Rural interests: the Farm Bureau, the Farmers' Union

Racial elements: the Sicilian Society, the Steuben Society, the Hibernian Society, the Friends of the Ukraine, the Ku Klux Klan

Prohibitionists: the Anti-Saloon League, the Women's Christian Temperance Union, the Protestant Pastors' Conference

"Liberals" and "wets": the Association Opposed to Prohibition

In addition, there are the various organizations of professional men, such as the Bar Association and the Medical Society; and various casual interests that are not organized but whose adherents coöperate, as for example, the bootleggers.

*Other Divisions.*—Besides the sharp divisions into interest-groups noted in the foregoing section, there are other considerations that influence citizens in their choice of candidates, namely:

Religious prejudice

Sectional loyalty

Traditional party loyalty

Hero worship

A disinterested desire for good government

*The Formulation of Issues.*—Out of the conflict of interests, prejudices, and loyalties certain well-defined issues emerge. For example, one of the issues usually concerns the incidence of taxation. Shall the manufacturer and the merchant bear the chief burden through the levying of an income tax, or shall the farmer and the small home owner bear the burden through the levying of a tax on real property? Shall the city man who uses the city streets pay for the highways in the country through the levying of a sales tax on gasoline, or shall the farmer pay for them as a consequence of a tax on real property? Prohibition, likewise, divides the country and the city, the foreign born and the native born, the employer and the employe.

It is the task of the newspaper reporter to discuss the actions and declarations of politicians and voters that tend to shift the existing balance toward one side or the other. Unless the reporter is thoroughly familiar with the ambitions, plans, and history of the interest-groups in his community, he cannot discuss the movements and the actions of these groups. That is to say, he cannot discuss the phenomena of politics. In the following section the political situation in five different communities—both cities and states—is described. Although not typical, the descriptions represent the interaction of interest-groups and the influence of loyalties and prejudices under different circumstances.

*Examples.*—1. In this state, which is 75 per cent rural, the pressing needs are first, more revenue to improve the highway and school systems, and, second, a shifting of the burden of taxation from real property (especially farms) on to the virtually tax exempt capitalists who own and exploit the mineral resources of the state. The rural voters, despite their voting strength, have not been able for fifteen years to shift the tax burden or to produce sufficient revenue for highways and schools. Their failure is due to the perennial introduction into politics of a moral issue which overshadows the economic issues. At the first the moral issue was prohibition, but afterward it concerned attempts to pass an anti-evolution bill, and later, a bill to abolish legalized gambling at racetracks.

The interests who own and operate the racetracks are extremely wealthy and powerful. In order to protect their profits, they have combined with the virtually tax exempt capitalists who own and exploit the mineral resources. Had the introduction of the moral issue of racetrack gambling been postponed for a few years, the rural voters could have concentrated their strength against the mining capitalists and defeated them, then they could have turned upon the racetrack owners. But instead, they placed the moral issue first with the result that they have been successively defeated on both economic issues. The state has consequently failed to make the most of its opportunities. The country press is influenced by the uneducated and impractical rural pastors, and the metropolitan press has had insufficient influence in rural communities. The moralists have determined the motif and the politicians have had to develop the political composition accordingly.

2. This state is one of the best-governed commonwealths in the union. There is no graft in the government, there is one of the

finest highway systems in the country, fine public buildings, an excellent educational system, excellent civil service regulations, an excellent system of charitable and penal institutions, very little crime, and a rather fair distribution of the tax burden.

The chief issue in politics is the perennial effort by manufacturers, farmers, laborers, or small merchants to readjust the tax burden. At one time it is the manufacturers who desire a shifting of the tax burden, at another time it is the farmers, or the laborers, or the small merchants.

A less important issue, but an outstanding one in a state so well governed, is the tendency of recent administrations to build a political machine by means of appointments. The conflict, therefore, is twofold: first, a non-partisan conflict between interest-groups over the incidence of taxation; and second, a conflict between the citizens, on the one hand, and the professional politicians, on the other hand. The political reporters in this state confine nearly all of their articles to analyses of figures concerning taxation, property valuation, expenditure, and distribution of revenue, and to discussions of personalities in politics and of appointments of officeholders. The moral issue has never entered into the scheme of politics, and the racial issue has entered only in connection with other issues of national importance.

3. In this state urban residents outnumber rural residents in the ratio of about 6 to 4. But the rural voters have control of the government. The present administration is graft ridden and is one of the most dishonest in the nation. It has been able to obtain the rural vote and the labor union vote in the cities because it enacts legislation that favors farmers and labor unions. If the forces that control the urban votes, exclusive of the labor union votes, were not so hostile to labor, the urban voters could defeat the rural voters and obtain control of the government. Unfortunately for them, the urban voters have been unable to obtain the much needed relief. A change will not occur until the dishonesty of the present administration has become intolerable to the public-spirited citizens of all occupational classes. But when that time comes the labor element may find itself without many friends in the government. The state administration has also had the support of the Anti-Saloon League, but there is evidence that the influence of that organization in this state is waning.

4. This city, which has a small percentage of foreign-born population and is victimized by profiteering public utilities, elected an administration upon a moral issue. Protestant ministers and the politicians who were out of office aroused sentiment against the "liberals" who favored a modification of the drastic state prohibition law and against Catholics. The administration is honey-



combed with graft, having even accepted campaign contributions from a powerful public utility. The newspapers of the city have been unable to make the vital issues real in competition with the church meetings, the lodge meetings, the Ku Klux Klan literature, and "whispering" campaigns of the fanatics. Apparently, the citizens, also, make a clear distinction between public virtue and private virtue, and assume that the former is of less consequence.

5. This city is so large and contains such a large proportion of foreign-born residents that it is doubtful whether the fair and intelligent efforts of the newspapers can, in the immediate future, overcome the racial prejudices and elemental instincts of the majority of the citizens. The inability of the anonymous, inarticulate citizen to comprehend the complex issues of municipal government and to perceive the falsity of the issues created by the politicians is an outstanding example of a "phantom public." Fortunately, the city is youthful and a civic pride exists that is extraordinary for so large a city. The business interests and the "better element" are among the most enthusiastic in America for public improvements, parks, beautification of the city, and fine public schools. The chief anti-social elements are foreign-born wage earners with old-world prejudices and outlook. The current administration came into power by inflaming one racial element against another and by promising lax enforcement of the prohibition law. The result is an administration manned by pay-rollers, a scuttling of the Civil Service Commission, delay in constructing public improvements, a raid upon the school treasury by contractors, and an attempt to surrender the city's franchise rights to a public utility.

*Ephemeral Issues.*—The issues mentioned in a foregoing section are fundamental. Most of them, too, are perpetual. No candidate for office can ignore them. Most candidates try to straddle them or invent new issues that are calculated to obscure the fundamental issues. Whenever the issues in a campaign are fundamental they are emphasized by the newspapers or by interest-groups, and the politicians are compelled to take a stand regarding them. In such cases, the issues are not made by the politicians.

Frequently, however, the issues are ephemeral and are "made" by the politicians.

For example, in the 1926 gubernatorial campaign in New York, the incumbent, Governor Smith, a Democrat, appealed to the voters on his record in connection with his efforts to inaugurate public

control and development of the water power in the state and his efforts to make the governmental machinery more efficient. In opposition, the Republicans could not make effective argument in the interests of the private corporations who desired to exploit the water power for their own profit, nor could they affirm that Governor Smith's achievements in reorganizing the state administration were against the public interest, so they "made" a counterissue, namely, charges of graft against the Tammany organization of New York City—with which Governor Smith had been associated—in connection with the sale of impure milk in New York City. In both instances, the issues were ephemeral. One issue was "made" by Governor Smith because it grew out of his record; the other was "made" by his opponents in order to provide an attack against the Democrats. But despite the hundreds of speeches and editorials about these two issues, many voters made a choice between the candidates that was based upon a more fundamental and perpetual issue, namely, the well-known attitude of Governor Smith toward prohibition laws. Thus, the principal issue, so far as thousands of voters was concerned, was not water power or milk or good government, but liquor.

There is, also, another kind of issue—a false issue—that politicians, in their desperate efforts to achieve success, fasten upon. This kind of issue appears to attract a considerable number of votes. One issue of this type is the pledge of the politician to reduce taxes even when it is impossible to do so—the so-called economy issue. Another false issue of this type is one that cannot be classified because it has little relation to the process of government; such an issue, for example, was introduced in the 1924 mayoral campaign in Milwaukee when the Mayor, a Socialist, lost a considerable number of votes because it was charged that he had failed to send a telegram of condolence to the widow of President Harding following the President's death.

*Intellectual Issues.*—In nearly every election there is a large body of eligible voters with detached interests. Of these voters there are two classes. One class, because it perceives that it has no self-interest at stake and because it is not responsive to any of the particular appeals to racial and religious prejudice and sectional and party loyalty, declines to loan its sword to either contestant. This class of non-voters has recently increased

to a great extent.<sup>6</sup> The second class of disinterested voters, like the first class, perceives no egoistic interest at stake and is unresponsive to emotional stimuli, but, unlike the first class, it participates in elections. This class of voters uses its franchise and its influence to promote an altruistic idea or ideal and at all times is alert to urge and vote for "good government." For want of a satisfactory name, the class can be denominated the "better element." It is this class that the individual-worshipping democratic philosophers of the eighteenth century conceived as the "public." It is, in fact, the only group to which a wholly intellectual appeal is addressed. Because it includes many of the business and professional leaders of the community it is the group to which editorial arguments are chiefly addressed by the intelligent newspapers; for, although itself small in numbers, its opinions and its influence tend to radiate and filter downward until they affect in large degree the opinions of other voters who are without private interests in politics. The success of democracy depends almost entirely upon the growth of this group in numbers and influence.

This class, naturally, is not organized, and in no two successive elections does it contain the same individuals. For the candidates and issues are usually determined by the various interest-groups, and the independent voters are usually compelled to support one side or the other without definitely aligning themselves with the interest-groups.<sup>7</sup>

**Leadership.**—Personal leadership is one of the most important factors in politics, and the newspaper reporter cannot afford to ignore it. The voters sometimes personify even the issues.<sup>8</sup> Personality alone may elect a popular politician; for

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<sup>6</sup> Approximately 51 per cent of the eligible voters abstained from voting in the national elections of 1920, and approximately 47 per cent abstained from voting in the national elections of 1924. In municipal primary elections the percentage of abstentions is sometimes as high as 60 per cent.

<sup>7</sup> For example. A few years ago a majority of the "better element" definitely enlisted with the dry organizations, but since 1925 many such voters have withdrawn from the ultra-dry organizations and have assumed an independent attitude in elections, frequently voting dry but refusing to support every candidate endorsed by the dry organizations.

<sup>8</sup> Which is the more significant issue in Italian politics: the philosophy of Fascism or the personality of Benito Mussolini?

temporary definition of the modern newspaper. The modern newspaper is many things: it is an agency of communication, a leader, and a species of show business. The outlook for its improvement as a social agency lies not so much in the future minimization of its character as leader, as Mr. Lippmann suggests, as in the minimization of its show-business character. The newspaper ought not to relinquish its leadership, but it ought to invoke realism in public thinking. The fault is not that the newspaper champions causes, but that it regards the mass of men as "impervious to education."

Following sections of this chapter treat of the newspaper as a reporter of political phenomena; no attempt is made to discuss the newspaper in its rôle of leader.

*A School of Democracy.*—The newspaper, as an agency of communication, can better serve the public interest by educating its readers in political values than by acting as a mere propagandist. It is better that the newspaper perform as a teacher in the school of democracy than as a spellbinder on the stump. For though it is easier for the newspaper, by adopting the technique of the demagogue or the charlatan, to win a single campaign, it must again and again fight the battle of civic righteousness without bringing the voters any nearer to a real understanding of political values. The rôle of teacher does not prohibit the newspaper from using catchwords or the language of the man in the street, but it does forbid the creation of false issues and the practice of directing non-rational appeals to the mere self-interest and prejudice of the voter. The newspaper should regard the voter as a citizen rather than as a pawn in the game of politics. The newspaper should teach the citizen to act in the public interest instead of as a self-seeker, a Protestant, a Pole, a dry, or a farmer.<sup>9</sup>

#### PARTY ORGANIZATION

Political parties have a legal status. The various state legislatures pass laws regarding nominations and elections that re-

<sup>9</sup> For an example of how a newspaper combined "truth, half-truth, and downright falsehood" with "pictorial and verbal appeal to class and group prejudices, irrational fears and hatreds to produce a distorted and utterly misleading picture of our international situation," see C. H. Woody, *The Chicago Primary of 1926*, pp. 71-76.

quire the parties to choose candidates and present nominations in accordance with certain regulations. For example, the statutes provide that the candidate of a party must receive a certain number of votes in order that his party in a subsequent election may be entitled to place the name of a candidate on the ballots, and statutes in some states declare whether nominations shall be made by direct primary election or by convention.

Political parties also have a code which they themselves establish independently of the legislature. They adopt rules which bind the party to conduct its business in a particular way. For example, a state convention may adopt the so-called unit rule which requires the state delegates to the national convention, or the county delegates to the state convention, to cast the entire vote of the delegation for the candidate or the proposal that is favored by the majority of the delegates, instead of permitting the individual delegates to cast their votes for their particular choice; and a party may also make rules as to whether a candidate nominated in a convention shall be chosen by a mere majority of the delegates' votes or by a two-thirds majority. Each party in each state also makes rules concerning the size and character of certain governing committees and the methods by which the committee members are chosen; in some states, however, the legislature makes such party rules.

**Party Committees.**—Party control is of both temporary and permanent character. The temporary control is that which is vested in the convention, and is, theoretically, the higher control. The permanent control, which is frequently the real control, is vested in the various committees. Locally, party government is by a hierarchy of permanent committees. At the very bottom are the precinct committeemen. Pyramided upon them are the ward committees (in a city), the county committees, and the State Central Committee. In some states there are township and town committees. District committees, made up of members within a congressional, judicial, or legislative district, exist in some states, but the duties of such committees usually devolve upon the county committees, which are bodies of real authority in the party organization. The committees are usually elected every two or four years and, in most instances,

in the year that a state election is to be held. In most states the interested adherents of a party assemble by precincts, at the call of the County Chairman, to elect a Precinct Committeeman. The precinct committeemen make up the County Committee, except that in some states in which there are large cities, the ward is the smallest unit of party government, and the ward committeemen make up the County Committee.<sup>10</sup>

At the head of the party organization in the state is the powerful State Central Committee. In a few states there are two state committees, one called the State Central Committee and the other the State Executive Committee. In most states the State Central Committee is made up of representatives from either the congressional districts or the counties; it ranges in size from 11 in Iowa to 460 in California, the average being about 30 or 40 members. The members of the Committee are sometimes elected in the district or county conventions prior to a state convention, sometimes during a state convention by a caucus of delegates, and sometimes in a primary election by direct vote of the party adherents. Their term of office is usually four years.

The State Central Committee exercises a great deal of power. It selects a campaign committee, fixes the ratio of representation in the state convention, chooses the convention city and makes arrangements for holding the state convention, determines the time for a state convention and issues the call, appoints or recommends election officials, and sometimes nominates a candidate for high office following the death or disqualification of the regular nominee.<sup>11</sup> The State Central Committee, also, is the permanent party executive that "nurtures the party's strength" between elections. The newspaper reporter assigned to cover politics ought to be acquainted with the leading members of the State Central Committee of both major parties, and he ought to

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<sup>10</sup> In some cities, the ward committeemen appoint the precinct committeemen, instead of being chosen themselves by the precinct committeemen.

<sup>11</sup> Sometimes the date upon which a state platform convention is held is very important, for it may be called prior to the primary election on the assumption that the convention will adopt a certain plank in its platform and thus force a particular candidate who is opposed to the plank to withdraw his candidacy. In some instances, a State Central Committee can, in this manner, virtually dictate the nomination of a particular candidate.

be especially well acquainted with the member representing his district so that he may obtain authentic information about party affairs during the intervals between election campaigns.<sup>12</sup>

## (1)

United States Senators William B. Evans and Thomas R. Knox, *allies of necessity* since the campaign of 1926, today broke over the question of the reorganization of the Republican state central committee, and in the showdown Evans won.

Evans has held control of the party organization for 12 years, except for the short period following the 1926 campaign.

Knox came here personally for the state committee meeting. In an effort to patch up a temporary truce, he talked by long distance with Senator Evans in Washington, but Evans refused to compromise.

Knox supported George Summa, of Williamsburg, for state chairman, and Evans favored Clyde Walker, of Brownsville. After hours of caucuses, Walker was elected by a vote of 8 to 4. Knox insisted that he would consider Walker's election a "personal affront," but the Evans members on the committee were adamant.

Both camps agreed tonight that the split today will have considerable bearing on the fall campaign inasmuch as some of the leaders who backed Knox are candidates for election.

The reorganized state central committee is composed of the following members:

First district: James Heilman, Mrs. Laura Galloway; Second: George Summa, Mrs. Margaret Hayes; Third: George V. Bressler, Mrs. Genevieve Wilson; Fourth: Clyde Walker, Miss Julia Ford; Fifth: John H. Gordon, Mrs. Mary Bancroft; Sixth: Harry B. Grimm, Mrs. A. H. Moore; Seventh: Walter Stewart, Miss Agatha Berry; Eighth: Mark West, Mrs. Samuel Douthitt; state-at-large: Donald M. Allen, Frank Hogan, Mrs. Matilda Combs, Mrs. Warren Sewell.

<sup>12</sup> For a complete discussion of the powers of the State Central Committee, see C. E. Merriam, "State Central Committees," *Political Science Quarterly*, Vol. XIX, pp. 224-333.

(2)

Because of two contests advanced to the Democratic state central committee, which will meet here Friday for reorganization, Charles L. Traynor, state chairman, today sought an official opinion from the state board of election commissioners as to the jurisdiction of the state central committee.

In the second district a deadlock developed between the two candidates for state central committeeman, Earl Mathews and Mayor Lewis Turner of Lockport. In the eighth district, W. J. Hurst has protested the election of Marshall Pryor.

As soon as the state central committee has reorganized and decided the contests, it will proceed to the election of a sub-committee to prepare for the special platform convention to be held June 1.

**Conventions.**—Temporary control of a party is exercised in the party conventions of delegates assembled in a precinct, a ward, a county, a district, or a state. Prior to the adoption of the direct primary method, candidates were nominated solely by conventions, and the practice still survives in some of those states in which the law of the state permits a party the option of nominating by either a primary election or by a convention. In most states, however, the state convention is chiefly a *platform* convention, that is, a convention in which the party determines the issues upon which it will contest an election. The precinct, ward, county, and district conventions meet for the main purpose of choosing delegates to the state convention, electing members of the State Central Committee, and indorsing the candidacies of certain persons who are seeking the party nominations for important offices. The functions of the state convention, described on page 336, vary according to the laws in the various states.<sup>18</sup>

**The Local Convention.**—Nearly all local conventions, such as the county convention, are cut-and-dried affairs. Their business is transacted quickly and, in many instances, before some

<sup>18</sup> There is no uniformity in party government, and the statements in this section are about as general as it is possible to make them. The student should examine carefully the party organizations in his own state and compare them with the general statements in this section.



of the delegates know what is actually happening. The main purpose of the convention is to name delegates to the state convention, the delegates usually being persons whom the party managers can rely upon to support their favorite candidates or proposals in the state convention. Immediately after the County Chairman has called the convention to order, various men, who have been appointed beforehand, rise at their cue and make certain motions. Usually, the entire program of business has been typed on sheets of paper and copies have been handed to selected men so they will know what to do at the proper moment.

The procedure is usually as follows: The County Chairman rises and reads the official call to the convention. The call explains the purpose for which the convention is called, as for example, the election of delegates to the state convention and their instruction for candidates or issues. Next the Chairman calls for nominations for Temporary Chairman, and a nomination is quickly proposed and voted upon. Next, a Secretary is elected and a Sergeant-at-Arms appointed. Next, some person rises and reads a list of nominations for delegates to the state convention, and moves their election. The nominees for delegates are elected by *viva voce* vote.<sup>14</sup> After the election of delegates, some person reads a set of resolutions indorsing—or denouncing—the administration holding office in the state or nation. Sometimes the resolutions indorse the candidacy of a particular party leader for a high office in the state or federal government, or in the party organization, such as a member of the State Central Committee or delegate from the state-at-large to the national convention.

The business of the convention having been completed, adjournment is moved by some person who has been given the cue to make the motion. Since the entire business was previously arranged by a few party leaders the convention has merely ratified their decisions. The experienced reporter who covers a county or district convention usually conserves his time by obtaining in advance from the party leaders one of the type-

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<sup>14</sup> The number of delegates which a county convention is entitled to send to a state convention is usually determined by the number of votes cast for the party's candidate in the last election.

written sheets which contains the order of business, or, at least, a list of the persons to be named as delegates and the party leaders who are to be indorsed. He then sits through the convention proceedings in order to report any happening that is not on the program.

Sometimes, however, local conventions result in contests. If there are two factions or divisions in the party, two sets of officers and delegates are nominated and balloted upon. When such is the case, the reporter should try to estimate the vote accurately because there is no assurance that the tellers appointed to make the division will make a true count of the vote, and, should the contest be appealed to the state convention, the rank and file adherents of the party ought to be informed by the newspaper as to the actual division of the vote. In many local conventions everybody who attends is entitled to vote, and one side or the other may pack the convention. In some local conventions there is not only a contest between two rival factions, but there is an actual bolt. That is, the defeated faction withdraws to a different meeting place and holds a separate convention in the hope that it can convince the state convention that its delegates, instead of the opposing faction's delegates, are entitled to be seated in the state convention.<sup>15</sup>

(1)

That United States Senator Wallace Webster has tightened his grip upon the Republican party organization in the state is indicated in the results of county conventions held yesterday throughout the state.

Except in the Third District, where an ultra-wet faction of Republicans led by former Mayor Kenneth B. Oldham, of Freeport, wrested control from the Webster leaders, there was little opposition to the Webster slates of delegates.

It is apparent that the delegates named

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<sup>15</sup> The author has twice reported a district convention at which, following a division of the vote, the two factions held conventions simultaneously in the same convention hall. There was presented the spectacle of two chairmen presiding and two different programs being put through, with every third man in both factions a self-appointed Sergeant-at-Arms, eager and ready to try to eject his opponents bodily from the convention hall.

## POLITICS

335

yesterday, when they meet in district caucuses at the state convention here next month, will name Webster leaders to twelve of the thirteen places on the State Central Committee.

Aside from the efforts of Webster leaders to retain control of the party organization, the county conventions yesterday made little effort to dictate orders to the party in regard to either platform or candidates in the coming state elections.

Most of the conventions adopted resolutions declaring for a dry plank in the platform and endorsing Governor Arthur Coghill for reelection.

In Dunbar county, in the Eighth district, however, a group of wets bolted the convention and, in a session held in a corridor of the county building, adopted a set of resolutions declaring for a revision of the bone-dry state prohibition act and the Volstead act, and named an anti-Webster delegation to the state convention.

It is doubtful, however, that the bolters will carry their contest to the state convention in the face of the state-wide dry sentiment exhibited yesterday in the county conventions. The only opposing voice likely to be heard in the state convention will be that of the Third District.

## (2)

Sixty-eight delegates, instructed to vote in the state convention for an ultra-wet plank in the party platform but uninstructed as to a gubernatorial candidate, were named yesterday in the Drake county Democratic convention held in the county building.

The rumor that the O'Farrell faction would offer a substitute set of delegates did not materialize because of a compromise reached with the Beck leaders prior to the convention.

The Beck group agreed to name twenty-four O'Farrell adherents as delegates provided that O'Farrell would not insist upon instructions for a prohibition referendum plank.

The convention endorsed David F. Kuehl for congressman, and denounced the Republican state administration as "intolerable" and "inefficient." An effort to obtain endorsement for Richard S. Ott

for lieutenant-governor was voted down although it is presumed that Ott's candidacy is looked upon favorably by Quincy Beck.
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Instructions for delegates provided that they be bound by the "unit rule."
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The list of delegates follows. . . .
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**Functions of the State Convention.**—The functions of the state convention vary according to the laws in force in the various states and, also, according to the particular year in which the conventions are held. Generally, the functions of a state convention are:

To instruct delegates and alternates to a national convention

To nominate candidates for the elective state offices

To adopt a party platform

To choose members of the State Central Committee

The function of instructing delegates and alternates to the national convention is exercised by a state convention only during the year of a presidential election. The contest, theoretically, is between two or more candidates for the presidential nomination. It is frequently decided before the convention assembles, for, ordinarily, the leaders in each county try to name delegates to the state convention who will favor a particular candidate. Oftentimes, however, when there is party lethargy, the delegates are not instructed in the county conventions, but, after they reach the state convention, are won over to the support of a particular candidate.

Contrary to popular belief, the contests for delegates in county and state conventions during a presidential year are seldom contests between the actual candidates for the presidential nomination, but are contests between rival state and local leaders for the control of the party organization. The state party leaders do not usually care so much whether their favorite candidate for the presidency finally wins the nomination, but it is vital that they control the delegates to the state convention so that they can control the party organization.<sup>16</sup>

<sup>16</sup> The two United States Senators in a certain state, both Republicans, were champions of two opposing candidates for the presidential nomination and were engaged prior to the county conventions in lining up delegates. Neither cared whether his candidate was finally victorious in the national convention, for the contest between the two rival aspirants

previously been chosen by the party leaders, is elected. He is escorted to the platform by a committee and proceeds to deliver the "keynote" speech, an advance copy of which has been furnished to the newspapers. The Temporary Chairman is chosen because of his ability as an orator, and the keynote speech is an encomium of the party's record, history, and ideals, a denunciation of the opposing party, and—in the year of a state election—an outline of the issues upon which the party will appeal to the voters.

Following the delivery of the keynote speech, a Permanent Chairman—usually selected in advance by the Committee on Permanent Organization—is elected. He is chosen because of his skill in presiding over deliberative bodies and because of his loyalty to the party leaders whose program might be upset on the floor of the convention by a hostile chairman. The Permanent Chairman also delivers a prepared speech, and afterwards presides over the deliberations of the convention. A recess is usually taken following the Permanent Chairman's speech in order to allow the committees time to prepare their reports for submission to the convention.

*Committee on Credentials.*—The two important committees are the Committee on Credentials and the Committee on Resolutions. The committees are usually composed of members representing a county or district and are appointed to the committee places by a vote of their respective delegations. In conventions that nominate candidates for offices the Committee on Credentials is frequently the more important committee because it determines which delegations may sit and cast votes. When there are two delegations from one county contesting for seats, the Committee hears their arguments and then rules in favor of one or the other. Sometimes, the arguments are only a matter of form, for the Credentials Committee seats the delegation which will vote in accordance with its desires.<sup>17</sup>

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<sup>17</sup> An historic example was the method used in the Republican national convention in 1912 when delegations from the patronage-controlled southern states who favored the nomination of Taft were seated in preference to the delegations instructed for Roosevelt. This convention gave rise to the political term "steamroller." In national conventions, however, the National Committee first hears contests which may be appealed to the Committee on Credentials.

*Committee on Resolutions.*—The function of the Committee on Resolutions is to draft the party platform. It is usually determined beforehand who will be the Chairman and the Secretary of the Committee, and these two men, in advance of the convention session, draft a tentative platform. Not always, however, is every plank in the tentative platform adopted by the Committee on Resolutions; for special interests and delegates with pet planks appear before the Committee to argue for the insertion or substitution of particular planks. The Committee sometimes gives way to these demands.

Ordinarily, the Committee on Resolutions is not able to report a platform until late in the convention session. In the meantime, therefore, the delegates are addressed by numerous speakers—usually candidates for office—who have no authentic place on the program but who take advantage of the opportunity to place themselves or their pet ideas before the assembled delegates.

After the Committee on Resolutions has completed its labors, its Chairman appears before the convention, reads the platform, and moves its adoption. Usually there is opposition in the convention to at least one plank in the platform, and sometimes there is a minority report by certain members of the Committee. But ordinarily, advocates of substitute planks rise and offer amendments. Party leaders who favor or oppose the amendments deliver speeches concerning the amendments, and then a vote is taken. On important amendments the voting is by roll call. The roll of counties is called in alphabetical order and the Chairman of the delegation, having polled his delegation, rises and announces the vote. Sometimes the Chairman reports a division in his delegation, but often, even though there is a division in the delegation, the vote of the whole delegation is cast as a unit for the proposal favored by the majority.

*Reporting the Convention.*—Conventions which exercise the function of choosing candidates usually last more than a single day. When nominations are to be made the balloting usually begins prior to the report of the Committee on Resolutions, and sometimes the convention delays the balloting upon candidates until the platform has been adopted. When candidates are

nominated by a convention there are usually numerous nominating speeches and seconding speeches.

In this era of the direct primary the party convention is not as spirited as in former days, but many conventions still result in spirited contests over the platform. The newspaper reporter usually finds that he cannot sit passively on the convention floor, but must devote most of his time to interviewing party leaders. Although the speeches of the Temporary Chairman and the Permanent Chairman occupy an important place in the newspapers, they are prepared and submitted in advance. Because the sessions of the Committee on Credentials and the Committee on Resolutions are not usually open to reporters, the reporter must elicit information from the party leaders and members of the committees. Some of the most important events do not happen on the floor of the convention, but in committee rooms, lobbies, and hotel rooms. Conventions that nominate candidates are more difficult to report because the reporter, before the balloting begins or while it is proceeding, must mix among the leaders to learn of trades and switches. For such conventions, however, more than one reporter is ordinarily assigned by each newspaper or press association.

The reporter who is well acquainted with the political leaders, who knows exactly how much influence each of them possesses, what the present ambition of each of them is, and which of the spoils of politics there are at the moment available for trading purposes, is the reporter who is best prepared to explain what happens at a state convention.<sup>14</sup>

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## (1)

Confident of victory in the November elections, nearly 2,000 delegates are here tonight for the opening tomorrow of the Democratic state convention.

Imbued with confidence by the schism in the Republican party and the recent revelations of scandals in the highway department, the leaders of the state Democracy tomorrow will plead with the delegates for harmony, a condition that has not been apparent in the party for eight years.

The gubernatorial primary last month is believed to have settled the prohibition issue so far as the Democratic party is concerned, and there will be little opposition to the insertion of a dry plank in the platform.

Had the convention been held prior to the primary, however, the contest over the prohibition issue might have embittered Democrats to the extent that victory in November would have been jeopardized. The convention, party leaders say, will be made an occasion for smoothing out the differences engendered in the primary.

Despite the present outlook for harmony, however, Democrats from the Fifth district, led by Thomas Mowry, will urge a prohibition referendum plank upon the Committee on Resolutions and may even carry the matter to the floor of the convention.

These tactics, however, will be followed by the Fifth district leader merely to assuage the overwhelming wet sentiment in the metropolis. It is believed that Mowry will fall in behind the party ticket in November regardless of the outcome of his efforts to insert a referendum plank in the platform.

The convention tomorrow will assemble at 10 o'clock in the City Auditorium. After prayer by the Rev. W. B. Thompson of the First Methodist Church, Willard Bronson, chairman of the state central committee, will read the call.

G. S. Getz, of Maryville, as temporary chairman, will deliver the keynote address. It is expected that former Governor Harry B. Muller will be named as permanent chairman. Leon L. Qualley, editor of the Troy Free Press, will probably head the committee on resolutions.



Only one contest will come before the credentials committee. Two sets of delegates from Boyle county are asking for seats in the convention. Both delegations are regarded as dry in sentiment, but the contest involves control of the local party organization in Boyle county where Philip Y. Traylor, a youthful attorney who graduated two years ago from the state university, is trying to oust George Barnabe, the Boyle county leader.

Among the prominent Democrats on hand tonight at local hotels were former United States Senator Chester D. Berry; Congressmen Fred G. Davis and Kendrick B. French; National Committeeman Frank Williams, Mayor Daniel Warren of Paintsville; and National Committeewoman Mrs. Susan B. Collier.

(2)

Harmony prevailed in the Democratic state convention which adjourned at midnight after adopting a platform that denounced the recent scandals in the highway administration and declared for continued enforcement of the prohibition laws.

The only discordant note was the "personal liberty" speech of Thomas Mowry, wet leader of Concord, who late last night offered an amendment to the resolutions on the floor of the convention after it had been voted down almost unanimously in the resolutions committee during the afternoon.

Delegates sat in their seats all through the day and evening listening to speeches by party leaders. Albert C. Johnson, the party's standard bearer in the November elections, appeared on the platform immediately after the conclusion of the keynote address and received tremendous applause. He promised a "landslide in November," but warned of overconfidence.

Candidate Johnson was portrayed by G. S. Getz, the keynote speaker, as a combination of Andrew Jackson, Grover Cleveland, and Woodrow Wilson.

"A great man has risen in this state to bring back the government to the people," he declared.

"We now face a set of conditions that are indeed strange to the people of this state. They are the conditions that existed in the federal government in 1828

when Andrew Jackson came into the presidency. They are the conditions that faced Grover Cleveland when he came into power in 1884. They are conditions that Woodrow Wilson faced and conquered, first, when he came to the governor's chair in New Jersey, and again, when he came to the White House.

"The conditions in this state at this moment are no less shameful. The privileged interests that Andrew Jackson drove from Washington have returned again to our people. The dishonesty that Grover Cleveland found in Washington after twenty-four years of Republican misrule were recently found to have been duplicated in this state by a Republican state administration.

"The power of the unconscionable exploiters that Governor Woodrow Wilson destroyed in the state house at Trenton, New Jersey, and again in the capitol at Washington, are today entrenched in our own state capitol.

"But that power will give way. It is already giving way. The rascals had warning no later than last month when the Democracy of the state nominated for governor a man who has the courage of Andrew Jackson, the common honesty of Grover Cleveland, and the lofty ideals of Woodrow Wilson."

The convention assembled in the City Auditorium at 10 o'clock. After a prayer by the Rev. W. B. Thompson, of the First Methodist Church, State Chairman Willard Bronson read the call of the convention. G. S. Getz, of Maryville, was nominated for temporary chairman and was elected by acclamation. He was escorted to the chair, and delivered the keynote address.

At the conclusion of the address, the delegates clamored loudly and long for Albert C. Johnson, candidate for governor. He was located back stage after a wait of ten minutes, and addressed the delegates in a few sentences. At the conclusion of his address applause lasted for a quarter of an hour.

Former Congressman Henry H. Prather, of Wilmington, was elected permanent chairman. He postponed his address until after the luncheon recess.

During the afternoon the delegates listened to Congressman Prather and to all of the candidates on the party ticket.

At 7:45 o'clock the committee on resolutions began its report. Leon L. Qualley, editor of the Troy Free Press, chairman of the committee, read the platform and moved its adoption. Immediately, Thomas Mowry, Fifth district leader, was on his feet. He presented a substitute plank which declared for a prohibition referendum. It was the same amendment he had offered during the afternoon to the resolutions committee.

Mowry spoke for thirty minutes in favor of the plank which is desired by the Fifth district. His speech, however, was not in the least threatening or bitter, but was pitched on the high plane of an appeal for personal liberty. Mowry's amendment was voted down without a roll call. The platform was adopted a few minutes later by a viva voce vote, and the convention adjourned.

In addition to the planks declaring for continued enforcement of prohibition and for the punishment of Republican officeholders alleged to have been involved in the highway department scandals, the platform declared for a readjustment of the general property tax so as to relieve the burden upon farm property, for a gasoline tax, for a revitalization of the state civil service commission, for a reorganization of certain departments of the state government, including the automobile license bureau, the banking examiner's office, and the state board of pardons and paroles, and for repeal of the law passed by the last legislature which "emasculated" the textbook law.

The credentials committee entertained only one contest. A delegation from Boyle county, led by George Barnabe, was seated instead of the delegation headed by Philip Y. Traylor.

**Conferences and Caucuses.**—Of much greater importance in practical politics than conventions and committee meetings are the conferences and caucuses of party leaders held for the purpose of choosing candidates and of determining campaign issues. Ordinarily, the conventions and the committee meetings merely ratify the decisions made in conferences, and—in communities in which a party is divided into two or more factions—the conferences of the separate factions are, in effect, minia-

ture conventions. Although newspaper reporters are seldom admitted to these conferences, they can obtain a great deal of information by interviewing the leaders. Newspaper reporters who are thoroughly familiar with the records, ambitions, and associations of the politicians have little difficulty in explaining to their readers the motives that determine the make-up of a slate or the choice of campaign issues. They must be able, however, to absorb a great deal of political gossip.

*Making Up the Slate.*—The slate of a faction or of a party is, in most cases, made up by the leaders who actually control an organization or a portion of an organization. Each of the leaders brings to the conference an individual strength based upon the number of votes he controls, and this, usually, determines the extent to which he influences the make-up of the slate.<sup>19</sup>

The make-up of a slate is determined by two principal factors, namely, the necessity for satisfying the individual leaders, and the necessity for pleasing the voters in the regular election. So far as is possible, the individual leaders agree upon candidates who represent their respective interests, but they must frequently select a high type of candidate, even though the candidate is not an organization man, in order to obtain success for the ticket at the regular election. Moreover, a slate must usually be balanced, that is, it must appeal to the various sections of the electorate as well as to the whole electorate. With this purpose in mind, the slate makers select candidates who will draw votes from particular racial, religious, and sectional elements. Candidates are also named who are likely to attract the votes of women, of ex-service men, of church members, of substantial business men, and of particular fraternal orders. Yet a balanced slate, although extremely important to party success is of little

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<sup>19</sup> Control of an organization, however, does not determine absolutely the influence of an individual party leader. Some leaders have influence solely because they happen to hold an important office or because of their personal influence in campaigns. For example, Mayor William Hale Thompson, after the defeat of his group prior to the 1923 Chicago primaries, was almost bereft of control over any of the organization units, but his remarkable power to influence voters brought him back to an important place at the council table of Republican leaders in 1926 and obtained for him the mayoral nomination in 1927.

consequence if the head of the ticket is unable to attract voters. The ordinary voter is often influenced to vote for a party ticket merely because he desires to support the head of the ticket. The result is that frequently incompetent and dishonest men are elected to responsible positions in the government service merely because of the popularity of the gubernatorial or mayoral candidate.

Newspapers ought to report thoroughly the slate-making process of a party or faction, publish the records of the individual candidates prior to the election, and where it is possible report the various trades and deals made by the factions or the party leaders.

Republican county leaders late yesterday were of the opinion that the make-up of the county ticket would be completed today following a final conference between party leaders in the office of County Judge E. A. Hargrave. Republican voters will be asked to ratify the slate at a formal convention to be held next month.

The Bourne faction, it was said yesterday, had been able to obtain only four places on the ticket, the dominant Allen faction retaining seven places, and the Carr faction five places.

The five places accorded the Carr group are not regarded as concessions to "Tony" Carr and his lieutenants, however, because it is understood that Warren Allen has already arranged a bipartisan trade with Democratic leaders whereby the Carr nominees will be sacrificed to the Democrats in November.

Followers of both Warren Allen and Henry Bourne ostensibly welcomed the return of the Carr faction to the party councils and tried to give the impression that the slate-making conferences were 100 per cent harmonious. But it was pointed out by politicians close to Allen and Bourne that political apostasy is not forgiven so easily.

The real surprise in the slate-making arrangement is the fact that the dominant Allen faction did not demand more places on the ticket in view of the comparative showing of Allen and Bourne candidates in the last election.

However, it is thought that Allen believed more profit would result to him

from the naming of seven Allen men to sure places on the ticket and then, in the guise of harmonizing with the Carr group, trade off the doubtful places to the Democrats.

Allen, it is said, has obtained the re-nomination of County Judge E. A. Hargrave, the nomination of Fred E. Clarke for assessor and Dwight W. Haynes for district attorney, in addition to four nominations on the county commission.

Allen men named on the slate to run as candidates for county commissioner are Virgil P. Frankhouse, Claude Funk, K. L. Polakowski, and Miles T. Ickes.

Sam B. Wilson, a Bourne adherent, will get the county recorder's nomination, and Perry Arnold, also a Bourne man, the shrieval nomination. Arnold has been deputy sheriff in the last two Republican administrations, and is a former commander of the Duncan post of the American Legion.

The only major place on the ticket accorded a Carr adherent was the clerkship of the circuit court, which was offered to Bernard B. Bailey.

Bourne followers obtained four nominations on the county commission and Carr followers two nominations. It is understood that nominees for these places are to be decided upon today, the only certain nominee being Timothy Roettger, of the Bourne group, who is the incumbent president of the commission.

Regardless of which other Carr and Bourne followers receive places on the slate, the Republican ticket, as announced yesterday, is thought to be stronger in its appeal to the voters than any previous Republican ticket since the death of Murray Morris, former city-wide leader.

As usual, an appeal is made to German and Polish voters, and, by the nomination of Perry Arnold for sheriff, a bid is made for the votes of ex-service men.

#### MAKING POLITICS REALISTIC

Most of the present evils in local politics grow out of the fact that politics is not made real to the citizen. Although the long ballot, the unscientific organization of local government, the inadequate primary laws, the indifference of the voters, and

many other political factors are to blame, the fact remains that voters are not adequately informed about politics, especially as to the real nature of politics. Almost the only agency that can remedy this situation is the newspaper. It should be the task of the newspaper to invoke realism in politics whenever it is possible. The newspaper, as an agency of communication, can help to bring reality into politics by two methods of political reporting, namely, the proper identification of leaders and interest-groups, and the adequate explanation of issues.

Newspapers have been severely criticized because they have failed to identify the true and false leaders, explain the issues, and publish all the facts relating to deals and campaign funds. Much of the criticism has been unwarranted, but some of it has been deserved. The failure of newspapers to live up to the ideals set for them by their critics is due to two factors. In the first place, newspaper publishing takes on so much of the character of a show business that it exaggerates and otherwise falsifies the personalities of leaders and tries to personify and oversimplify purely intellectual issues. In the second place, the phenomena of politics are not as verifiable as are the facts that relate to ordinary public affairs. Both of these factors prevent newspapers from identifying leaders and from explaining the issues in a campaign. They will be discussed in the sections that follow.

**Identifying the Leaders.**—A political leader should be judged not only as to his personal fitness for leadership, but as to his association with certain interest-groups. This test presumes that the leader will be judged according to his past record rather than according to the promises he makes for the future. It is the propensity of the electorate to accept the promises of politicians, forgetting meanwhile their records, that produces so many of the evils in government. Whenever it is possible, therefore, the newspaper ought to identify the true and the false leaders. It ought to tell frankly of a leader what his attitude has been in respect of certain past issues, which persons and groups have assisted him in his political career, whether or not his supporters have exploited the public in a dangerous or a mischievous manner, which persons and groups he favored while he

was in office, which persons he has appointed to office, and what capacity he has shown as an administrator or lawmaker.

Because the modern newspaper has failed so frequently to identify the true and false public leaders, politics has gradually shifted into the realm of the unreal. This condition would not exist to such an extent if the newspaper would devote one-half the effort to printing the truth about politics and politicians that it does to printing the truth about the other events that it reports.<sup>20</sup> Instead of identifying the political leaders properly, the newspaper shields them as it shields no private citizen. This situation, however, does not result from the desire of the newspaper to mislead its readers, but is the product of a combination of unfortunate circumstances.

In the first place, the newspapers treat politicians as *dramatis personæ* in a half-real drama, and allow the politicians to present untrue pictures of themselves in the newspaper columns. Most successful politicians are also successful showmen. They create a rôle and perform it self-consciously for the approval of the electorate.<sup>21</sup> Politicians understand that there are certain personality stereotypes that are acceptable to the ordinary voter and they make efforts to reflect these stereotypes in specially prepared biographies, regardless of the actual facts in the lives of the candidates. A candidate, for example, must usually be pictured as having had an early struggle in life, as having a spotless private life, as being a home lover and companion to his wife and children, as being religious, as being a friend of the farmer and laborer, and—when he is a candidate in a primary election or party convention—as having always been "regular." This so-called biographical material is submitted to newspapers by the party propagandists and is published regardless of whether it is true or whether the newspaper favors or opposes

<sup>20</sup> The layman, who is inclined to underestimate the degree of skill required in the newspaper profession, does not appreciate the extreme care that is exercised by newspapers in their efforts to present truthful accounts of public affairs.

<sup>21</sup> The most flagrant deceptions are usually in the field of national politics, as when a city lawyer candidate for president poses for a picture in a hay field, dressed in overalls and holding a pitchfork. Because these pictures are furnished by the regular agencies who obtained them from the party propagandists is no excuse for newspapers publishing them.



the candidate. Unfortunately, there is no remedy for this practice so long as the show-business aspect of newspaper publishing is so closely bound up with the institutional aspect, and so long as newspapers find it easier to publish the propaganda than to investigate and correct it. It is inconsistent, however, for newspapers to censor their advertising columns in the interests of truth and at the same time permit politicians to present false pictures of themselves in the news columns. To what degree newspapers ought to censor campaign propaganda it is impossible to say, but a strict censorship of a portion of the obviously exaggerated material would go far toward making politics more real to the voter.

Newspapers, moreover, permit politicians to use their columns for printing anonymous statements. Sometimes politicians resort to the practice of "flying kites"; that is, they give statements to the newspapers with a view to testing public opinion upon a particular matter but with the understanding that their names will not be attached to the statements. This practice, obviously, is against the public interest. But even when the reporter interviews a politician and publishes the politician's answers to his direct questions, the politician, if he afterward discovers that the statements have embarrassed him or his associates, denies having made them and the newspapers publish the denial. The remedy for this practice, obviously, is for the newspaper to refuse to print the denial. An exaggerated sense of honor, however, has usually prevented newspapers from adopting such an attitude.

Newspapers, also, deliberately shield those politicians who are officeholders, and refrain from telling all the truth about their mistakes or their dishonesty. The inefficiency or dishonesty of officeholders is frequently not reported in the newspaper for two reasons. In the first place, the reporters realize that the officeholders will close certain news sources to them and thus place them at a disadvantage with competing newspapers. If it is only a reporter, not the newspaper itself, that has offended the officeholder, the newspaper can usually remedy the situation by assigning a different reporter to cover the office of the offended politician. But if the aggrieved officeholder closes the

news sources to the newspaper itself, not merely to one of its reporters, the newspaper faces an ethical problem: Shall the newspaper perform its duty to the public even though it suffers in its own interest? Is it asking too much of a private business to demand that it perform on a higher ethical plane than ordinary businesses? Ideally, the newspaper is a quasi-public institution, and that fact ought to determine its decision.<sup>22</sup>

The second reason that newspapers sometimes fail to report all the shortcomings of particular officeholders is that some newspapers regard an officeholder as "their" candidate. Not only do some newspapers publish nothing derogatory to their candidate during a campaign, but after the candidate has been inducted into office the newspapers continue to give him wholehearted support regardless of his shortcomings. This practice would probably not result to the injury of the public if politics was conducted solely by one officeholder or by a chief officeholder; that is, if politics was entirely a personal, not a coöperative enterprise. But politics is conducted by machines, and no machine can be entirely virtuous for long. Political machines are just as honest as the public requires them to be, and, consequently, whenever the public ceases to be critical of them—that is to say, whenever the newspapers fail to report their mistakes and dishonest practices—they begin to act in their own, rather than in the public interest. The public is entitled to a true picture of the politicians, and newspapers should be impartially critical of all officeholders regardless of which party or machine they belong to.

**Explaining the Issues.**—Invoking realism in national politics, in which the issues concern foreign policy and other complicated questions, is a task that the newspaper alone ought not to be called upon to perform. At the present stage in civilization it is demanding the impossible.<sup>23</sup> But in the field of local and

<sup>22</sup> Most officeholders, of course, are neither incompetent nor dishonest, and it is possible that newspapers may be so critical of officeholders that many competent men will refrain from entering public office. This view is stated in a sincere manner by Governor Albert C. Ritchie, of Maryland, in *Editor and Publisher* Vol LX, No 49, p 32. For a contrary view, see H. Pringle, "Politicians and the Press," *Harpers Magazine*, Vol CLVI, pp 618-624.

<sup>23</sup> Cf. W. Lippmann, *Public Opinion* and *The Phantom Public*.

regional politics—except in the rarest instances—it is possible for the newspaper to provide the basis for a sound public opinion. The political leaders and the interest-groups are close at hand, the issues are less complicated, and investigation is less difficult. Newspapers, however, frequently regard state and city election campaigns as a species of entertainment and make little effort to obtain the facts that are necessary to explain the issues to the voters. Mr. Frank Kent has offered an explanation that is applicable, in large measure, to local politics:<sup>24</sup>

The political information of a newspaper comes to it through its political reporters and correspondents. These reporters are of two classes. There is the class . . . who never get below the surface. They do not get at the fundamental facts because the candidates and the political leaders, the comparatively few men who know them, take particular pains to see that they do not get at them.

These fellows take the press stuff handed out at headquarters and absorb the "guff" put out for effect by the press agents or by small political fry who are not of the "inside circle," but they do not get at the basic things at all. . . .

The other class of political reporters . . . are the fellows whose personality and ability is such that the facts cannot be kept from them. They gain the friendship and confidence of political leaders and party candidates to a degree that makes it possible for them to see the whole inside working of the game.

They get at the real facts, all right, but they get at them in such a way that they cannot print them without betraying trust and violating confidence. If they were the type of men to do that sort of thing they would never have got close enough to the inside to know what was really going on. . . .

So, one class of reporters is just as helpless about presenting the facts to the public as the other. One class cannot print them because they do not know them and the other class cannot print them because they do.

The difficulties described by Mr. Kent in such a disconsolate manner are, however, more in the nature of limiting factors in the situation than obstacles incapable of removal. The reporter can seldom learn of campaign contributions and secret deals until after a campaign has ended, but sooner or later political leaders and political groups permit certain facts to come out.

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<sup>24</sup> *The Great Game of Politics*, pp. 206-207.

If newspapers will publish these facts, even though they are discovered months after a campaign has ended, they will enhance the education of voters.<sup>25</sup> Political reporters who investigate politics constantly and publish information between elections render more service to the electorate than reporters who presume that campaign news is the only kind worth reporting. When, however, the facts about politics are published immediately following an election in which the newspaper's advice has been rejected by the voters, the newspaper should be careful not to assume the attitude of a poor loser.

A second weakness in the ordinary system of reporting political news has been pointed out by Mr. Kent, as follows:<sup>26</sup>

Papers . . . which are honestly fair and try fully to present both sides merely succeed in evenly dividing their space between the propaganda of both. In one column you read what has been prepared by the paid publicity agent of one party, in another the output, in the guise of an interview or speech, of the publicity agent of the other party. It is, for instance, not possible seriously to contend that in the 1924 campaign, with one or two exceptions, the true picture of the Presidential candidates, the bald facts about the campaign, its management, and the issues, were presented by the newspapers. They were not presented . . . [because] the printing of the unvarnished facts involves a degree of brutal frankness from which, for a number of reasons the newspapers shrink. The bald, unvarnished facts seem to them too bald to be true—and even if true it seems unwise and dangerous to cite them baldly. They prefer the propaganda—and "fall for it" even when it is against their own side. . . .

The chief explanation for this weakness of the newspaper is not ignorance and not corruption, but inertia and fear, "the same type of inertia, and the same type of fear that permeate

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<sup>25</sup> In this respect American voters do not have as much opportunity to educate themselves in politics as a European electorate. Because an election campaign in European countries lasts only two or three weeks the educational agencies provide a steady stream of political information throughout the period between elections. European elections, also, may be called suddenly instead of recurring at definite periods, and this fact causes the newspapers and other educational agencies to emphasize government more than it is emphasized in the United States.

<sup>26</sup> *Forum*, Vol. LXXII, pp. 804-814

American life"<sup>27</sup>—the concomitant characteristics of national prosperity, security, and comfort. A second explanation is the apparent tendency of the ordinary citizen to make a distinction between private virtue and public virtue, and the newspaper's knowledge of this tendency of the voter.

**Realistic Methods.**—Individual newspapers have devised various methods for explaining issues to voters. In addition to the editorial arguments and graphical representations employed by the newspaper in its rôle of leader, numerous devices are used to present facts in the news columns. Newspapers that make serious and earnest efforts to educate voters in local political values report political news whenever it can be discovered. They report and explain significant new alignments among party groups and significant appointments to office; they discover frauds that were perpetrated during past elections and past administrations; they uncover the source of campaign contributions. This information comes to them as a result of patience. It is elicited piecemeal from various informants and afterward constructed into a fabric of fact. Sometimes, however, the information must be obtained by other means. For example, a newspaper that wished to know whether certain public utility interests had given support to the successful candidate for Governor, placed a reporter in the anteroom of the Governor's office at a time when a certain legislative measure pertaining to public utilities was up for passage. The reporter identified each lobbyist and legislator who visited the Governor during a period of two days, and afterward, by noting which legislators supported the measure, was able to deduce whether the Governor, contrary to his promises during the election campaign, had influenced the voting upon the measure. This information, although it was published by the newspaper too late to be of assistance in defeating the legislative measure, served nevertheless to identify the Governor in subsequent political campaigns as a false public leader.

A method that is more effective at the time, however, is that of having a reporter write anonymous news stories detailing the conversations of various politicians and giving their anonymous

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<sup>27</sup> Cf. N. A. Crawford, *The Ethics of Journalism*, Chap. V.

views upon certain issues. Writing under the pseudonym, "The Senator," a reporter for the *Chicago Tribune* has thus helped to educate Illinois voters. The conversations are reported in the jargon of the politicians and are turned into realistic explanations for the particular political maneuvers. Although some of the following examples are biased, they illustrate how the method can be employed effectively:

## (1)

Illinois is governed by \$100,000,000 and the legislature is fading into a rubber stamp futility, handing over largely its law-making powers to the executive and judicial branches.

A couple of old timers in the senate sauntered into the corridors during a lull in the morning vote swapping and gave me an ear full of politics.

"It's a queer session," says one. "What are we, a bunch of trained seals? or are we one of the three coordinate branches of government?"

"Government?" says I. "The trouble is that the \$100,000,000 hard road bonds are running the state. The governor runs the legislature because he controls the road bonds and the road making, and they say there's still \$60,000,000 of the bonds to be spent. The governor's working majority in the legislature is held together by the patronage in road building controlled by the governor."

"Oh, well," says the other statesman, "lawmaking is largely a matter of you scratch my back and I'll scratch yours."

## (2)

"It's the truth," says one of the great commoners, "the governor's got control of the legislature. He can pass anything; he could even pass a bad dollar. Take me, for instance, I'm against a gas tax. But a fellow has sometimes got friends who want to hold their jobs at the state house. Or maybe, he wants to spring some good honest guy out of the pen on parole. Or perhaps, there's a hard road promise to his district. The administration doesn't overlook anything when it puts on the thumbscrews to get a bill through. What chance have I to keep an open mind?"

(3)

"But how does it feel to be ruled by a hundred million bucks? How do they exert their pressure?"

"I'll tell you," says one old timer. "Promises to build the hard roads have the old fashioned lines of job patronage beat a mile. Take me, for example. I'm anti-Small [that is, against the governor]. Well, the governor's fellows go into my district. There's a bunch of farmers who give me strong backing on election day. The Small fellows tell the farmers the governor will route the hard roads past their farms when it is built, if I can be prevailed on to support some of the administration's pet bills. These farmers want the hard road to run past their farm, so they jump me and suggest that I might get friendly with the governor, and when I tell them I'm not for sale I know I'm making trouble for myself the next time I run. That's all."

(4)

"Well," says one leader of thought, "I never saw a session like this. The governor's fellows are going the works on the gas tax. Never have I seen such log-rolling, vote swapping, and trading. All the power of patronage has been dumped in—concrete roads, state house jobs for constituents—all to get through a bill to levy \$15,000,000 tribute on automobile owners to strengthen a governor who even now is a one-man ruler of the legislature. It's enough to make the statues of Abraham Lincoln and Stephen A. Douglas fall over backward on the state house lawn."

Imitation of another's method, however, does not of itself make for efficient political reporting. The political reporter should study human behavior, and himself learn political values and political methods. If he obtains a realistic knowledge of the nature of politics, if he is energetic, courageous, and honorable, and if he can write clearly and in an interesting manner, he can report political events capably and explain the phenomena of politics.

## EXERCISES

1. Criticize the following news story that was published during an election campaign:

Milwaukee, Wis. (Special to The News)—Democratic leaders here are overjoyed because of the results of straw votes which indicate overwhelming sentiment in Wisconsin for Governor Smith.

So enormous is the indicated plurality of Governor Smith over Herbert Hoover that the Republicans are expected to open wide their money bags and send thousands of dollars into the state between now and the election, in an effort to turn back the Democratic sentiment. . . .

Despite the assertions of Republicans in the press that they are afraid to spend much money this year because of the Harry Sinclair-Will Hays campaign fund scandal, it is believed by Democratic leaders here that the present outlook will so alarm the party chiefs in the East that they will take big chances in order to stem the Smith tide.

It has been pointed out since the Sinclair-Hays scandal that the Republicans have frequently won the national elections although they had poorer candidates and poorer issues than the Democrats, simply because it is possible in this modern age of publicity to make people believe anything, provided sufficient money is spent for propaganda. Whether this is true or not, it is thought that the 1928 campaign in Wisconsin will furnish an excellent test of the efficacy of propaganda to overcome the early sentiment of the voters

2. By means of newspaper files and campaign documents, analyze the last important regular election in your city or state, listing in the order of importance the determining factors, such as personal leadership, machine organization, intellectual issues, emotional issues, and the influence of interest-groups.
3. When a Judge who desires reelection deliberately performs unusual actions in his court room, such as eating sandwiches, in order to obtain publicity, ought the newspaper to assist him in his plans? Can you formulate a definition of news which would require that the Judge's behavior be reported?
4. Rank the following abstract desiderata in the order of their importance in the mind of the ordinary citizen: Prosperity, Liberty, Stability, Justice.



5. List the principal politicians in your city and state, classifying them as officeholders and non-officeholders and as true and false leaders.
6. Analyze the keynote speech delivered at a political convention in your state, listing the types of voters to which the individual appeals are addressed.

## CHAPTER XIII

### BUSINESS AND LABOR

BUSINESS news in the ordinary metropolitan newspaper occupies from one-seventh to one-fifth of the total space devoted to news. A great part of this space consists of the tabulated daily market quotations, but considerable emphasis is now being placed upon actual news stories that deal with business.

Business news usually falls into three categories, differentiated as to the type of reader it interests. First, is the news about specific businesses; this type of news interests special classes of readers who own, manage, or are employed in certain kinds of business, such as the hide, grain, feed, oil, and dry goods businesses. Second, is the news about business in general, especially about business in the community in which the paper is published; it is read by nearly all of the residents of the community. Third, is the news which directly or indirectly concerns securities listed on the stock exchanges; it is strictly financial news, as differentiated from ordinary business news, and is read by investors.

**News about Commodities.**—For the first type of business news—that concerning specific businesses or commodities—business men rely chiefly upon trade journals for information rather than upon the daily newspaper. The aim of the daily newspaper in supplying this type of news ought, therefore, to be in the nature of supplementing the information contained in trade journals. The trade journal, in the first place, does not usually furnish enough information about specific businesses in local communities; in the second place, it cannot supply daily market quotations. Ninety per cent of this type of news in the daily newspaper is in the form of quotations of commodity prices. It is furnished by the newspaper in the proportion that it is demanded by a section of the reading public. Retail and whole-

sale grocers, hay and feed dealers, grain dealers, dry goods merchants, fruit and vegetable merchants, dealers in hides, livestock farmers, and poultry dealers are types of readers who desire such news.

The market reporter is assigned to gather this kind of news. His duties are relatively simple. He visits certain markets and dealers every day, oftentimes merely telephoning to them, and prepares the price quotations usually in tabular form. He must be familiar with the names of the various commodities and must know the standard names of the varieties of commodities, such as "No. 1 hides," "prime steers," etc. Frequently, when there occur wide fluctuations in the price of a commodity the market reporter must interview local dealers and importers, in order that he may explain and forecast the price movement. Readers in the local community as well as business men, wish to know, for example, why there is a big increase in the price of sugar. The explanation may be found to concern crop conditions or the labor situation in Cuba, but this information can usually be furnished by local importers and wholesale dealers.

Housewives are buying less beef than they have for more than a year because prices have risen as high as 70 per cent since last spring, local packers declare.

Pot roast, which retailed at 22 cents a pound a year ago, is now quoted at 30 cents; porterhouse steak, which sold at retail prices of 45 to 50 cents, is now 60 to 70 cents; sirloin steak has increased during the year from 35 cents to 50 cents.

The increase is due to the scarcity of beef on the market, according to Henry Blumenthal, general manager of the Wood-Stacky Packing Company. The farmers have almost ceased to produce livestock and many cattle ranches have gone into bankruptcy, he said.

Carroll Carrick, vice president of the Owen-Carrick Packing Company, pointed out that decreased supply rather than increased demand has sent beef prices skyward.

"The decline in the price of cattle immediately after the war discouraged the farmer, and he has stopped raising cattle for the market," Mr. Carrick explained.

"The reaction from the period of de-

flation is being felt in the market now because it requires from one to two years to produce steers and beef cows. It will be at least a year before retail prices can be expected to decline."

**Local Business News.**—The second type of news, which interests local business men and others, relates to the expansion or contraction of local businesses and to improved facilities and methods of transportation, communication, and credit. Some of it originates in the local business associations and some of it originates more or less casually. Many newspapers have a reporter to cover each important type of local business news, one reporter being assigned to write real estate news, one to write railway news, one to visit the banks and industrial plants, and one to cover the Chamber of Commerce.

Bank officials are good sources of business news. In the first place, they furnish information about their own institutions, such as daily, weekly, and monthly clearing house reports, changes in official personnel, and proposed bank mergers.

A \$130,000,000 merger of two local banks was announced yesterday. Effective Jan. 3, the First National bank will absorb the Central Trust and Savings bank. The directors of both banks agreed to the consolidation and will call stockholders' meetings for Dec. 8 to vote approval.

The merger will result in "melons" for the stockholders of both institutions. The capital stock of the First National bank will be increased from \$4,000,000 to \$6,000,000. Its stockholders will be given the right to subscribe to one new share at \$100 for each four shares now held. The market price of the stock now is around \$500. This will require \$1,000,000 of new stock.

The remaining \$1,000,000 of new stock will be given to the stockholders of the Central Trust and Savings bank in a share-for-share exchange, although Central Trust stock recently was quoted around \$350 a share. In addition, the Central Trust will withhold between \$400,000 and \$500,000 of surplus and undivided profits from the merger, which will permit a 40 to 50 per cent dividend to the stockholders.

The merged banks will operate under

the name of the First National Bank and will occupy its building at Ninth and Fir streets. In addition to the \$6,000,000 capital stock there will be about \$5,400,000 of surplus, undivided profits, and contingent reserves. Total deposits will exceed \$110,000,000.

Charles A. Wallace will remain as chairman of the merged institutions. Otto F. English, president of the First National bank, will continue as president of the enlarged institution. Other officers and employes of the First National and the Central Trust will be retained.

In the second place, bank officials, because they are in contact with business men, furnish news tips relating to local businesses, as for example, the proposed merger of three local ice companies. Other news about local industries, public utilities, and businesses, however, originates casually; as, for example, the announcement by a local manufacturer of the adoption of a policy of a five-day working week in his plant or a plan for improved working conditions. Some industries, realizing the importance of their relations with the public, now have public relations counsel to furnish information to the newspapers. Newspapers, however, ought not to rely entirely upon such sources of information.<sup>1</sup>

Real estate news is usually obtained by a reporter who visits regularly the local real estate brokers.<sup>2</sup> News stories obtained from real estate brokers are frequently of great importance to the community in that they embody announcements of proposed office buildings, factories, apartment buildings, and hotels, and furnish standards for judging the change in real estate values and the shifting of different sections of the population in a city. The news stories are interesting, also, because they tell of the passing of old landmarks, and are more or less personal when they relate to the sales or purchases of dwelling property.

<sup>1</sup> Some Ohio newspapers, in 1927, were said to have relied entirely upon the public relations counsel of the Ohio Bell Telephone Company to furnish them with information regarding rate hearings.

<sup>2</sup> The term "realtor" frequently used in newspapers to describe all real estate brokers is inaccurate. The term refers only to real estate brokers who are members of the National Association of Real Estate Boards, and who "conduct their businesses in accord with the code of ethics of the association."

Eaters of Fannie May candies may not know it, but they're financing a prospective forty-story monument to old Pa Dearborn's sweet tooth. It is scheduled for the northwest corner of Madison and Wells streets and is to be erected by H. Teller Archibald, owner of the Fannie May candy shops.

This bit of construction news was divulged yesterday when Mr. Archibald paid Jacob L. Kesner what is reported to have been \$1,500,000 for the corner lot, fronting 80 feet on Madison and 180 feet on Wells street. It is improved with an old four-story building which is to be remodeled. Later on, it is stated, Mr. Archibald will erect a forty-story skyscraper.

This corner has been the prospective site for the last few years of several tall hotel projects. At least two architectural firms, and possibly more, have spent considerable time and expense drawing plans for buildings which have never materialized.

Mr. Archibald's reported \$1,500,000 paid for the corner property would be at the rate of \$18,750 a front foot on Madison street, or \$104 a square foot on Wells street. D'Ancona & Pfbaum and Leesman, Roemer & Schnell were attorneys.

Railway news is also interesting to many readers. The railway reporter who visits the general and divisional offices of the railroads each day usually obtains information relating to changes in passenger schedules, the addition or replacement of certain passenger trains, expansion activities of the railroads, and announcement of new services. News about accidents and wrecks is unexpected news, but it is usually obtained from operating officials at the general or divisional offices. Officials are sometimes reticent about furnishing information about wrecks, and the reporter must frequently interview eyewitnesses as well as railroad officials.

The Northwestern, one of the railroads which initiated a system of health tests for trainmen and engineers about a year ago, is now reexamining a considerable number of the 9,633 employees originally tested. Of this number, 1,988—includ-

ing 826 engineers—were reported as having defective vision in some degree.

Of the 372 passenger train conductors 261, or 70.15 per cent, had defective vision. Of all the trainmen, the firemen were shown to have the best eyes.

**Business Associations.**—Most of the local business news originates in the offices of business associations and trade exchanges. Many of the local trade associations are affiliated with a central commercial body variously known as the Association of Commerce, the Chamber of Commerce, and the Board of Trade. Other trade associations are entirely independent of the central commercial body. Some of the latter are the Real Estate Board, the Cotton Exchange, the Livestock Exchange, and the Poultry Exchange. Some of the business associations usually affiliated with the central commercial body, and even occupying offices in the same building with the central commercial body, are the Better Business Bureau, which guards against fraudulent advertising and sales schemes; the Credit Association, a body organized by retailers to improve credit ratings of their customers; the Manufacturers' Association; the Retail Merchants' Association; the County Fair Association; and the Traffic Bureau, which is organized to obtain lower freight rates and improved transportation service for specific local businesses.

*The Chamber of Commerce.*—In most cities there is usually one central commercial body, but in some large cities there are frequently two, one that is strictly an industrial and commercial body, and another that is interested chiefly in civic affairs. The organization of a central commercial body, such as the Chamber of Commerce, in a typical city is about as follows:

1. The Industrial Division operates to induce new industries and businesses to locate in the city. Its work consists of preparing industrial surveys and other data and in presenting them to prospective new businesses, in conducting trade-extension tours, and in receiving visiting trade delegations. Information regarding the location of new industries and businesses in the city is furnished by the Industrial Division; this information is important as news.

2. The Convention Division operates to induce various state

and national organizations to hold their annual conventions in the city. Information of this character is always of interest to newspaper readers. Reporters who attend conventions usually obtain interesting news. Not only is the news of interest obtained at the meetings of important bodies, such as the Daughters of the American Revolution, the Federated Women's Clubs, and Rotary International, but the speeches made and the resolutions adopted at conventions of barbers, hairdressers, dancing masters, dentists, surgeons, chiropractors, clothing dealers, and many other business and professional men, are sometimes of great human interest to the ordinary reader. The subjects discussed at conventions are sometimes rather trivial, but ordinarily they concern progress in research, progress in professional ethics, the danger of competing businesses, the effect of external and unusual factors upon the particular business, the outlook for the business, the future of the profession, proposed legislation relating to the business or profession, and regulations to govern trade.

The reporter who covers a convention should usually obtain the following details: the speeches and discussions of members and invited speakers, resolutions, election of officers, and the choice of the next meeting place. Usually, the reporter can obtain advance copies of speeches. Ordinarily, he can learn prior to the close of the convention who are likely to be chosen as officers and where the next regular meeting will be held. Because most of the persons who attend a convention are strangers in the city it is not always easy for the reporter to obtain complete and accurate information. He should, therefore, at the beginning of the convention get acquainted with two persons, namely, the Secretary of the body and the leading local member of the organization. These persons will aid the reporter by explaining changes in the printed program, by identifying speakers, by obtaining special interviews with interesting members, by obtaining copies of resolutions and speeches, and by informing him in regard to the probable election of officers.

In preparing a news story about an important convention that lasts for more than one day, the reporter should include an announcement of the program for the next day, the most important



discussions he has listened to, and whatever is interesting about the probable choice of new officers. The first part of a convention program is usually concerned with addresses by members and invited speakers; the second part is a business session at which resolutions are adopted or rejected, officers are elected, codes of ethics are adopted, and a meeting place selected.

3. The Good Roads Division urges the construction and repair of certain roads, works for the routing of certain roads into the city, and prepares information about the condition of roads for distribution to tourists. This division is usually able to furnish a news story each week which describes the condition of roads; the information is of value to all persons who travel by automobile or haul merchandise in trucks.

4. The Farm Service Division operates to aid farming in the section. The division coöperates with county agents, extension specialists, and the local fair association, and prepares interesting and important agricultural news. Frequently, the reporter can obtain interesting crop stories by interviewing jointly the experts in the Farm Service Division and the local chief of the Weather Bureau.

5. The Safety Division, which coöperates with the city police department, prepares data on traffic accidents, plans the installation of safety zones on the streets, and conducts a program of safety education in the schools, in the newspapers, and among the truck drivers and taxi drivers employed by business firms. The news obtained from this division, when it is in the form of statistics and announcements, is interesting and, usually, is important.

6. The Traffic and Transportation Committee works to obtain reductions in freight rates and improvements in railway, express, postal, telegraph, telephone, and steamship service. The Committee sends representatives to hearings held by the Interstate Commerce Commission and the state railway commission; interviews railway executives to request the extension of railway lines so as to expand the city's trade area; and works constantly to obtain improved service, such as package car service and rerouting arrangements.

In many cities this work is not done by the Traffic and Trans-

portation Committee of the Chamber of Commerce but by a Traffic Bureau affiliated with the Chamber of Commerce; the distinction between the two bodies is that only certain firms bear the expense of operating the Traffic Bureau and that the officials of the Traffic Bureau represent at hearings not all the business firms in the city but an individual firm which believes it is being discriminated against in the rate structure.

A determined effort is being made to prevent a 20 per cent increase in rates on livestock shipments in the Western Trunk Line territory asked by carriers, it was announced by R. P. Douglas, director of the Traffic Bureau, who returned today from Chicago where he represented the Coughlin-Henry Packing Company at a hearing held before the Interstate Commerce commission.

The carriers are attempting to show that they are losing money in livestock shipments under the present rates. The livestock producers, on the other hand, claim that the hog raising industry is losing money due to the present rates and cannot carry a higher rate.

The hearing was resumed today at Kansas City to obtain testimony of shippers and carriers in that section of the Western Trunk Line territory.

7. The Foreign Trade Committee operates to increase the export trade of the community. In cities in which the federal Bureau of Foreign and Domestic Commerce maintains a local office, the Foreign Trade Committee coöperates with it. Frequently, it promotes or sponsors exhibitions. But, except for interesting statistics, the Committee provides little news that is interesting.

8. The Civic Affairs Board is usually a body affiliated with the Chamber of Commerce whose members are representatives of local civic bodies, such as community clubs, luncheon clubs, women's clubs, and labor federations. It sponsors projects of importance in connection with local government, such as tax reductions, park improvements, viaduct construction, zoning regulations, traffic regulation, and law enforcement. It usually holds weekly or monthly meetings that are of especial importance to the City Hall reporter.

**Financial News.**—It is beyond the scope of this book to explain the technique of financial reporting because, in the first place, the work consists almost solely of analyzing the subtle factors of fiscal affairs and the psychology of speculators; and, in the second place, it is only the reporters in a few large cities that have the opportunity to do strictly financial reporting. In the ordinary community, however, there are many phenomena that enter into the calculations of investors, and these have to be reported by newspapers throughout the country.

Thousands of Americans—men and women—today own securities. Frequently, the securities are bought and held for investment, but many times they are bought and sold quickly as a matter of speculation. Thousands of business men with moderate or small incomes have discovered that by studying business conditions they can purchase sound securities on the stock exchanges and earn considerable profit by reason of their judgment and study. Although thousands of small investors foolishly lose their savings by buying and selling speculative securities, many sensible business men who are willing to study business conditions for two hours a day find that their study repays them well.

Investors not only study the earning reports of specific businesses, but depend upon newspapers for a large part of their information. They choose that newspaper which goes to a great deal of effort and expense in order to provide such information. For it is not merely information about a particular business—available only in earning reports—but information of a general sort that influences investors.

A great part of this business news concerns the business man's securities only indirectly. Suppose, for example, that a certain newspaper reader in Toledo owns, among other securities, ten shares of the common stock of the Chicago and Northwestern Railroad. Suppose that he purchased the stock in August, 1926, when it was worth approximately \$77 a share. He purchased it both as an investment and as a speculation; for the stock ordinarily pays \$4 a share dividend, which is an annual return, at the then current price, of \$5.20 a share, and there are factors in the situation which forecast a rise in the market value of the stock. Some of the factors are as follows: the size of crops in the agricultural region in which

the railroad operates; industrial conditions in the same territory; the possibility of a merger of the road with the Union Pacific Railroad; the improbability of a merger with the Union Pacific Railroad because of the possibility of a merger of the Union Pacific Railroad with the Great Northern and Burlington railroads; the probability of the Interstate Commerce Commission allowing western railroads to increase their freight rates; the possibility that the Railroad Labor Board will grant a requested increase in wages to the employes of all western railroads. It is news about these factors that the business man wants his paper to tell him; he has these factors in his mind nearly every time he opens his newspaper. If the value of the stock should rise on the market to \$92 a share within twelve months—as it did—the business man, if he sold the stock at that price, would have earned a profit of \$150 on his speculation plus the \$40 profit accruing from dividends—a total of \$190 profit in a year on an investment of \$770. If, however, the business man had sold the stock in June, 1927, he would have realized only \$89 a share instead of \$92. Whether he sold the stock in June or held it until late in August would depend to a great extent upon the kind of news that he obtained from his newspaper. If crop or industrial conditions had declined, or had the proposed railway merger with the Union Pacific Railroad been denied, or had the road been denied permission to increase its freight rates, the investor might have sold the stock as quickly as he could.

The news about all these factors in the business man's problem originated in various parts of the country and was carried over the press association wires to Toledo newspapers. Had not newspaper reporters in various cities obtained the news, it would never have reached the investor in Toledo. It is by this pooling of news that the business pages of a newspaper are possible, and it is incumbent upon the reporters of business news in every city to obtain it and upon their newspapers to supply it to the press associations. The obtaining of certain routine business news is a simple matter, but the efficient business news reporter is one who analyzes the factors in the investment situation so that he can recognize important news when it emerges into the public light.

#### LABOR

News about labor ordinarily is news about labor unions. Except in the event of strikes and lockouts, the activities of unorganized labor are not in a state that can be reported in the newspapers.\* The activities of union labor, however, can be

\* Cf. W. Lippmann, *Public Opinion*, pp. 346-348.

reported rather thoroughly because labor unions pass resolutions, elect officers, strike, picket, boycott, negotiate, and perform other acts concerning which verifiable facts are known. These acts are usually the acts of an organized body, and they are performed during the course of a meeting, a conference, or a union election. The first task of the newspaper reporter, therefore, is to become acquainted with the structure of the labor organization in his community, and the second task is to become acquainted with the local labor leaders.

**Structure of Labor Organization.**—Because recent union organization, like Topsy, "just grew up" following the decline of the Knights of Labor in the late eighties, there is today a lack of uniformity in the structure of organization. From time to time during the recent history of organized labor, various local unions were created and afterward attached to national and international bodies; on the other hand, however, there are still organizations of workers in some trades and industries that have no national organization except their affiliation with the "departments" of the American Federation of Labor. Generally, however, workers in a particular craft or industry in a community have formed local unions and obtained charters from a national or international body, and have afterward joined with other unions in their community or region as members of a city, state, or district federation, or "central."

**The Local.**—The unit of organization is the Local. Locals are differentiated as *craft locals* and *industrial locals*. A typical craft Local is the Cigarmakers' Union of Chicago; a typical industrial Local is the Brewery Workers' Union of Chicago. The distinction between craft and industrial locals is that in the former body only the workers of a particular craft or trade are members, whereas in the latter body all the brewery workers—including technical experts, teamsters, and janitors—are members.<sup>4</sup>

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<sup>4</sup> A third type of Local is existent in small cities and in large cities where the workers in a particular trade are few; it is the so-called *labor Local*, and comprises all workers in all trades and industries in a particular locality. As soon, however, as the number of workers in a trade or industry has increased to the point where it is possible to organize a district Local, these unions are usually succeeded by the ordinary craft and industrial locals.

*The Council.*—In most cities the various locals in a particular trade coöperate in the formation of a Council. It is composed of delegates appointed to represent the members of the locals whose members are engaged in allied trades, as for example, the unions of plumbers, carpenters, bricklayers, steam fitters, and electrical workers who compose the City Building Trades Council, and the unions of workers in the printing and metal trades that form councils. The delegates who make up the Council are usually the officers of the locals. Frequently the councils in the cities amalgamate into state and national councils. The functions of the Council in a city are to discipline member unions for violations of wage agreements and union regulations, to act for the locals in making agreements with employers as to wages and working conditions, and to have the member unions act together in calling strikes or in threatening so-called sympathetic strikes.

*The City Central, or Federation.*—Locals in a city, also, form a second type of federation, usually called the City Central, or the City Federation. It is a body composed of delegates from all of the locals in a city that are affiliated with the American Federation of Labor. The functions of the City Central are chiefly political and social, and have for their purpose not so much the negotiation of wage agreements as the passage or defeat of legislative measures affecting workers, social uplift, mediation between workers and employers, and promotion of the boycott. The city and state centrals frequently have different names in different localities, such as the Trades Union Assembly, the Local Trades Union Council, etc. These organizations in a city usually meet weekly or biweekly.

*Kinds of News.*—The foregoing organizations, the labor leaders, and the employers are the subjects and the sources of labor news. A great part of labor news is the mere recording of the actions taken by these bodies. The meetings of labor organizations are usually closed to reporters, and, consequently, must be reported by means of statements given out by officials at the close of a meeting. But in the event of strikes, lockouts, and negotiations, the reporter obtains statements from labor leaders and employers, and, sometimes, writes eyewitness ac-

counts of acts of violence, and makes first-hand investigations of labor conditions.

Actions taken at meetings of labor locals are not often matters of general interest unless the Local is a large one, an aggressive one, or a radical one. The election of officers, the negotiation of agreements, and the passage of resolutions concerning boycotts frequently provide the usual material for news stories. The main functions of the Local—that is, the regulation of apprenticeship, the issuance of working cards, and the enforcement of union rules—are not of general interest to newspaper readers.

More important as a news source, however, is the Council. Since it is a large body composed of delegates from locals in allied trades, the actions of the Council usually have a wider public significance. Frequently, wage agreements are negotiated by councils rather than by locals. The functions of a Council are about the same as those of a Local except that, in as much as the various unions amalgamated in the Council are frequently in dispute among themselves, the Council must act as a mediatory and conciliatory body. The Council ordinarily negotiates wage agreements on behalf of the various locals, promotes coöperation and "sympathy" among the locals in the event of a strike or a threatened strike, and settles jurisdictional disputes among the various locals.

ment of employment of union men; fire protection—the two-platoon system; policy of national preparedness; public ownership of utilities; protection against abuses by public utility corporations; the economic and social desirability of blocking the proposed sale of the Automatic Telephone Company to the Bell Company; unemployment; vice; corruption of city politics; use of charitable contributions by corporations to prevent opposition to jobbery by women's organizations; government subsidized military training in schools; public licenses for operators of moving picture machines; enforcement of purchase of union-made goods; the right of labor organizations; the recall of state officials; the duty of making charitable contributions at home instead of for the war sufferers in Europe; financial assistance to workers in various sections of the country; government ownership of mines in Arizona; the initiative and referendum; vested rights; the case of Scott Nearing and the pernicious economic influence of universities; the Chicago school situation; the desirability of a city ordinance to allow any one arrested for petty crimes to be released on his own recognizance until the day of trial; inequality of law in this connection, i.e., the poor man goes to jail; the municipal court act; the political power of unionism; picketing—the unfairness of the law; boycotts and unfair lists; legal theory—human versus property rights—the concept of labor as a commodity; contempt of court; the anti-trust laws and their interpretation; methods of securing local, state, and national labor legislation.<sup>6</sup>

Several verbal clashes and threatened fist fights between union delegates marked the semi-monthly meeting of the Federation of Labor yesterday at Musicians' Hall, 175 West Washington street. The stormiest part of the session occurred when an attempt was made to oust Alderman Otto Noll from his position as vice president of the federation. The effort was defeated.

At the last meeting Tim McGee, a painters' delegate, introduced a resolution which proposed amending the federation's constitution so that its officers could not hold public offices.

Yesterday the amendment went down to defeat by a vote of 196 to 57. Then the delegates unanimously voted to give Ald. Noll a vote of thanks for his efforts in the cause of organized labor. Watt Metz, international president of the Street Car Men's Union, who attended the meeting, praised the work of

<sup>6</sup> R. F. Hoxie, *Trade Unionism in the United States*, pp. 126-127.



the alderman both in the trade union movement and in public office.

Speakers at the meeting asserted the proposed amendment was directed at Ald. Noll and Mike Kelly. Kelly, of the meatcutters, is labor director for the board of education. The two labor officials have been engaged in local trade union activities for about 20 years.

"Delegate McGee's antagonism toward me extends over a period of five or six years," declared Ald. Noll, in reply to speakers for the amendment. "About that long ago he was engaged in an attack on Secretary of Labor James J. Davis, and having worked under Mr. Davis as a federal mediator, I defended him.

"I have been a delegate to this federation since 1902. My record, both as a trades unionist and alderman, has been clean and I have never refused to aid a union man. If Delegate McGee has anything criminal on me or my associates, why does he not prefer charges like a man, instead of taking these underhand methods?"

After the meeting, McGee said he had talked the amendment over with Dan McVey, of the lathers, some time ago and that the latter approved of his proposal. He said John Wile, of the ironworkers, did not participate in the movement to have the federation adopt the new amendment.

After the amendment controversy, the meeting adopted a resolution calling on President William Green of the American Federation of Labor to request President Coolidge to intervene in behalf of Sacco and Vanzetti. But a further move by leaders of the local organization working to save the condemned men to use the federation's radio station, WCFL, for their purpose met with defeat.

Many newspapers do not make the effort to report labor news that they do to report many other kinds of news. The labor union is a distinct institution. Yet too frequently it is not considered so; it receives little publicity and seldom is discussed at length in the daily press except during an industrial crisis. This, usually, is an unfortunate policy for the newspaper to pursue. In the first place, the news of union activities is interesting to a large section of the public—the members. In the second place,

the general public ought to be provided with a clearer picture of the operation of labor unions and the problems affecting the labor movement. That is to say, newspapers, where it is possible to do so, ought to report the internal affairs of labor unions, as well as the disputes between labor and capital.

Charging that the piece-work system and sweatshop conditions were again prevalent in the women's cloak and dress industry, leaders of the Left Wing joint board of the International Ladies' Garment Workers union, outlined a campaign of union reorganization and a drive against the international officers at a meeting yesterday afternoon attended by 12,000 workers.

A resolution adopted unanimously made four principal demands, as follows:

1. The immediate reinstatement in the union of all expelled locals and individuals.

2. A referendum on the question of proportional representation.

3. The restoration of union conditions in the shops.

4. An immediate general election in the union under the supervision of an impartial committee.

*Industrial Disputes.*—The public usually has its first information about industrial disputes when the disputes reach the stage where an ultimatum is issued, negotiations are undertaken, a strike is voted, a strike is called, a lockout is threatened, a lockout is announced, strike breakers are employed, picketing is established, violence occurs, court injunctions are issued, or settlements ensue. It is important that newspapers keep in touch with industrial conditions so they can report the events that are preliminary to a strike. The public ought not to be taken by surprise. It is the public interest that is most affected by strikes in the transportation and public utilities industries. The public, therefore, ought to be told about the preparations for a walkout or lockout, the probable effect of a walkout or lockout, and the remedial measures to be taken by the public utility.

One thousand police reserves have been asked for and will be held in readiness for a crisis in the wage controversy between the People's Gas Light & Coke

Company and the gas workers' union. The workers, 1,000 strong, have threatened to walk out a week from today and shut off the city's gas supply unless their demands for increases in wages ranging from 25 to 30 per cent are granted.

Rumors were afloat last night to the effect that the company is making elaborate preparations to break a strike if one should occur. Union men reported that cots were being placed in some of the gas plants.

It was reported yesterday that a certain detective agency has furnished the Gas By-Products Company Corporation with 100 guards and is paying them at the rate of \$5.50 a day. The corporation operates two gas manufacturing plants in the city, the outputs of which are purchased by the People's Gas Light & Coke Company. Officials of the gas workers' union claim to have half of the corporation's employees organized "under cover."

Another detective agency on South Dearborn street is said to be holding 500 Negro laborers in readiness, prepared to throw them into the plants within a few minutes' notice. Still a third agency, with headquarters in Detroit, was said to be hiring laborers in the squad room at the rear of the National Union Watch Service, 15 North La Salle street. These men, it is said, are receiving \$20 a day waiting time.

Newspapers, also, ought to recite the reasons for an impending walkout or lockout, where it is possible to do so. Labor union leaders are usually eager to put their side before the public, although formerly they were reticent because they did not appreciate the value of publicity. The employers, also, are willing to issue statements, but are frequently reticent about discussing details. Neither side is willing to take the public completely into its confidence, and reporters must usually analyze the statements given them in the light of their own knowledge of the situation, and oftentimes must in addition begin their investigation by tracing rumors.

Meanwhile Gus Ball, business agent for the stage hands, had issued a statement in which he denied that men of his union were overpaid or that any the-

aters had been forced by him and his associates to keep on their pay rolls more men than were necessary. This was in answer to Joe Cox, of Cox and Kay, who had made public figures that showed some stage hands drew \$130 to \$135 a week.

As to the figures, Mr. Ball said, he had no quarrel with them. But it was the fault of the theater owners themselves when wages ran above \$100 a week, he claimed.

"We have repeatedly complained," he said, "that these men work too many hours. We have often requested Cox & Kay and Lunt & Tull, who operate large de luxe houses, to employ substitutes or extra men to shorten the hours of the regular men. And it's easy to see why the twelve men at the Cox theater make high weekly wages. Those twelve men—six on each shift—have been required to build the productions for all other Cox & Kay theaters."

Mr. Cox held that aside from one electrician per shift none of the other men needed to be skilled at his trade. Mr. Ball said that in fact the heads of departments—which include the master carpenter, master electrician, and master property man—must necessarily be highly skilled, else the performances could not go along smoothly.

"They are in absolute control of hundreds of thousands of dollars' worth of property," he added, "and they are responsible for any accidents either to property or to persons on the stage."

Mr. Ball then outlined the base pay for each grade. Heads of departments, he said, received \$93.50 a week. The master carpenter has an assistant at \$77 a week; the electrician an apprentice assistant whose maximum is \$40 for a 56 hour week, and the property man an apprentice assistant at the same figure. Ball asserted.

In addition to being competent mechanically, he said, the heads of departments are in fact executives and are required to exercise considerable initiative in putting on the shows. All the electrical effects and scenic effects in the Cox & Kay and Lunt & Tull outlying theaters are devised by these union men, he claimed.

*Strikes and Lockouts.*—After strikes or lockouts have become effective the newspapers keep in touch with the situation and report, in the most accurate manner possible, the progress of negotiations looking toward a settlement. Reporters, of course, are not permitted to attend the conferences. They must therefore accept prepared statements, and interrogate the conferees. By analyzing this information—that is, checking it against other facts in their possession and against their own sense of the probabilities—they can make fairly accurate reports. It is necessary for the reporter, however, to make a thorough study of the situation, including a study of the price movement in the particular industry, the recent history of wages in the particular industry and plant, and the peculiar conditions existing in the particular region or the particular company. The reporter, also, ought to be cautious about engaging in speculation as to the final determination of the controversy.

Definite announcement either of a settlement or a deadlock in the discussion of a peace plan for the Illinois coal industry is expected today, shortly after the peace committee of operators and miners meets at 10 o'clock this morning.

Secrecy shrouded the negotiations yesterday. The peace committee which had hired a hall for the public conferences at the Auditorium, hid itself in a Michigan avenue office building in which are located the general offices of many coal companies.

The attitude of the operators is reported to have stiffened materially in the last few hours. The optimism with which the conference opened appears, to have dwindled to some extent at least.

Large consuming corporations have exerted pressure against a settlement, miners' representatives declare, although they will not talk for publication. On the other hand, Illinois operators say they have been working under more onerous conditions than imposed by the union in other states.

The Illinois operators are apparently willing to go along and pay the Jacksonville scale, if they get what they consider a satisfactory commission fully empowered to change working rules so as to lower production costs and enable the Illinois colliers to compete with other fields.

loyalty than the politician, he, like the politician, is responsible to the rank and file rather than to a superior in command. He sometimes tends, therefore, to become a demagogue, that is to say, a "labor boss." Supported by a group of irresponsible followers, he may become a tyrant and compel employers to pay him tribute. There are such types of labor leaders, but on the whole, the loyalty of labor leaders to the purposes of the union is more powerful than the desire for personal power and profit; if this were not true, the labor movement in America would not have achieved the place it now occupies.

### EXERCISES

1. Analyze the real estate story on page 363, listing all of the facts that should be included in a story relating the sale of business property.
2. What relations would the real estate reporter have in the County Building, if any?
3. List the questions that readers would desire to have answered about a railway wreck.
4. What action would you take if the Division Superintendent of a railroad refused to give you the details of a railroad wreck which happened sixty miles outside your city and in which several casualties were reported?
5. What action would you take if you heard a rumor that a particular bank in your city was about to be forced to close its doors to depositors desiring to draw out their deposits? From what source could you obtain authentic news of this kind?
6. How would you handle a news story concerning the defalcation of a bank cashier in your city?
7. Comment upon the desirability of including the following statements in a news story relating to an impending strike:

... The gas workers were represented by Henry Leary, who, during the absence of his brother, "Big Jim" Leary, in Leavenworth prison, has been acting as president of the organization.

... Although his brother heads the organization, "Big Jim" is said to be the boss still, through Mrs. Leary, who has been at the union offices daily directing her lieutenants.

8. Comment upon the following statement: "The press association representative is under the temptation to tone it down before

he puts it on the wire. It is controversial; the victims are, presumably, immigrants (always unpopular), and the aggressors policemen (always entitled to the benefit of the doubt). He sees only trouble made if he dumps all this into a thousand newspaper offices."—Editorial in *New Republic*, Oct. 17, 1927.

9. Make a list of the industries in the United States in which you believe the workers are exploited by their employers.
10. Make a list of the industries in the United States in which you believe the workers are fairly well pleased with the wages and working conditions.
11. Comment upon the story on pages 375-376 in regard to the mobilization of police reserves in anticipation of a strike.

## APPENDIX I

### NEWS SOURCES IN THE STATE CAPITOL<sup>1</sup>

*Governor.*—Much of the front page news that concerns state government emanates from this office. Reporters interview the Governor at periodic press conferences or at various other times, and visit the Executive Clerk or Private Secretary daily. The office furnishes news about politics, appointments of officials, calls for special sessions of the legislature, pardons and the denial of pardons, extraditions and extradition hearings, and the approval and veto of legislative measures.

*Attorney General.*—Furnishes copies of legal opinions requested by the various state departments.

*Secretary of State.*—In some states, the functions of this office are distributed among other departments or bureaus. It furnishes news of corporations chartered, automobile licensing, approval of security issues, filing of nomination papers by candidates for state offices, filing of accounts relating to campaign expenditures, printing of ballots, official counting of ballots, and awarding of election certificates.

*Treasurer.*—Furnishes periodical statements of the condition of the state treasury, and other news about fiscal affairs.

*Superintendent of Public Instruction.*—Furnishes news about the public schools of the state.

*Bank Examiner.*—Furnishes announcements regarding the closing of state banks; announces a call for a statement of the condition of state banks.

*Tax Commission.*—Furnishes statistical information relating to the assessment and taxation of railroads, public utilities, incomes, inheritances, and occupations.

*Board of Control.*—Furnishes news relating to the state-supported penal and eleemosynary institutions, such as prisons and asylums.

*Commissioner of Agriculture.*—Furnishes crop and produce reports, and a variety of news relating to epidemics among livestock.

*Board of Health.*—Furnishes vital statistics relating to births, deaths, and epidemics, and releases educational news stories about matters of public and individual health.

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<sup>1</sup> The material for this section was furnished by Robert L. Riggs and Florence E. Allen.



*Utilities Commission.*—Has various names in the different states, such as Railroad Commission and Commerce Commission. Holds hearings in various parts of the state in regard to the service and routes of railroads, telephone, electric, gas, and other public utility corporations, and their applications for increases and reductions in rates. Announces its rulings. Inspects security issues of public utility corporations. Bonds motor vehicle common carriers.

*Insurance Commissioner.*—Furnishes news concerning fire inspections, arsons, insurance companies licensed to do business in the state, insurance rates, and the amount of insurance in force in the state.

*Department of Markets.*—Issues weekly market reviews, and furnishes news relating to the enforcement of the laws governing trading stamps and pure foods, and to marketing problems.

*Industrial Commission.*—In some states, has the name of Workmen's Compensation Board. Administers the laws concerning workman's compensation for injuries incurred while working. Furnishes statistics regarding industrial accidents, and news relating to compensation.

*Conservation Commissioner.*—In some states he has the title of Fish and Game Warden. Furnishes news relating to fishing, hunting, reforestation, and state parks.

*Adjutant General.*—Administers the training, equipment, and enlistment of the National Guard units in the state. Furnishes news relating to the granting of commissions to officers, the promotion of officers, and the summer training camps. Is an important source of news when the state militia is ordered out during a strike or riot.

*Prohibition Director.*—Furnishes news about raids and confiscations, and statistics relating to the enforcement of the state prohibition laws.

## APPENDIX II

### GLOSSARY OF LEGAL TERMS<sup>1</sup>

**Abstract:** An abridged copy of a document. **Abstract of title:** A synopsis of the history of a title to land.

**Admiralty:** A tribunal that has jurisdiction over all maritime causes.

**Affiant:** One who makes an affidavit.

**Affidavit:** A written statement of facts subscribed to before a notary public or other officer who has authority to administer an oath.

**Alias:** From the Latin, "at another time"; a fictitious name assumed by a person.

**Alibi:** From the Latin, "elsewhere." A defendant "sets up an alibi" when he tries to prove that he was, at the time charged, at another place than the one where the crime was alleged to have been committed; sometimes inaccurately used to mean an excuse.

**Ambulance Chaser:** Colloquial. "These ambulance chasers were lawyers who, aided by a spy system, were apprised of accidents. They met the victims and instituted suits demanding damages. The *Daily News*, in its investigations, found legal complaints made out in carbon copy with names left blank to be filled in . . . After studying the situation, the *Daily News* determined that one cause of the evil was that the law schools in the city were graduating classes of hundreds annually, and there was not enough legitimate legal business to keep the graduates occupied. In editorials, the newspaper is trying to discourage the study of law."

**Assignment:** The act by which a person transfers his property rights to another; a frequent use of the term is when a debtor assigns his property in trust for the benefit of his creditors; the term is never used with reference to testamentary transfers.

**Attachment:** The act of seizing property or persons that is authorized by a judicial order. **Writ of attachment:** The process for accomplishing the act.

**Beneficiary:** The person for whose benefit a trust has been created; also, a person to whom a life insurance policy has been made payable.

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<sup>1</sup> The reader is referred to the text for most of the commonly used legal terms not defined in this glossary.

**Capias:** From the Latin, "that you take." A writ directed to a Sheriff or other officer by a court ordering him to arrest a person and hold him in custody.

**Codicil:** An addition to a will made in order to alter the provisions of the will; it requires probate in order to become a part of a will.

**Collusion:** A secret, deceitful arrangement between two or more persons to make a deceitful use of the courts in order to defraud a third person or to deceive the court; esp., in divorce proceedings when one party pretends to have committed an act constituting a cause of divorce for the purpose of enabling the other to obtain a divorce.

**Commutation:** The substitution, after conviction, of a light punishment for a greater; for example, from a death sentence to a prison term.

**Compound:** To compromise. In bankruptcy, to effect a composition with a creditor. **Compounding a felony:** The crime of accepting a reward for forbearing to prosecute a felony, as when a person takes back stolen goods upon agreement not to prosecute the thief.

**Deponent:** One who testifies to interrogatory under oath in writing.

**Deportation:** The sending back of an alien to the country from which he came.

**Domiciliary:** Pertaining to one's domicile, i.e., his permanent habitation.

**Escheat:** The reversion of property to the state because there is no heir.

**Escrow:** A deed deposited by a grantor in the hands of a third person, to be held by him until the performance of a condition by the grantee.

**Estoppel:** A special plea that prevents a party setting up allegations inconsistent with his previous allegations, i.e., he is estopped to deny the truth of his previous allegations.

**Garnishment:** The process by which money owing to a judgment debtor is attached.

**Guardian ad litem:** From the Latin, "pending the suit"; one appointed to defend or prosecute a suit on behalf of an infant or other incapacitated person.

**Impeach Testimony:** To present evidence at a trial for the sole purpose of calling into question the veracity of a witness for the adverse party.

**Infringement:** An invasion of the rights secured by patents, copyrights, and trade marks.

**Lien:** A right against the property of another as security for a debt.

**Malfeasance:** The wrongful doing of an act which the doer has

no right to do. "The court held that Josselyn, as agent for his wife, was liable for malfeasance in negligently admitting water into pipes in the second floor of the building last October without first examining them."

**Misfeasance:** Performing a lawful act improperly. "The sheriff was found guilty of misfeasance of office because of his action in executing a writ of attachment on Van Zandt's property which the sheriff believed to belong to George Fanton."

**Mittimus:** A written command from a court to a Sheriff or other officer directing him to convey a certain person to prison, and a command to the Jailer or Warden to receive the prisoner.

**Ne Exeat: Writ of ne exeat:** A writ which issues in an equity suit, especially in divorce proceedings, to prevent a person from leaving the jurisdiction.

**Oyer and Terminer:** From the French, "to hear and determine"; the name of a *nisi prius* court in New Jersey.

**Padlock: Colloquial.** An injunction issued under authority of the National Prohibition Act to close the place of business of a person or firm which has illegally manufactured or sold intoxicating liquors and whose behavior is evidence of an intention to continue violation of the law.

**Pendente Lite:** From the Latin, "pending the suit." (*Cf.* "guardian ad litem.")

**Per Curiam:** From the Latin, "by the court"; refers to a judicial opinion concurred in by the whole bench of justices composing an appellate court, and, usually, when the opinion is prepared by the Chief Justice

**Prima Facie:** From the Latin, "on the face of it" **Prima Facie Evidence:** Evidence which is sufficient, if not rebutted.

**Quash:** To annul.

**Quitclaim Deed:** A deed in which the grantor passes title to the grantee, but which does not guarantee the validity of the title. (*See* "Warranty Deed.")

**Recognizance:** A recorded obligation to appear at court on a certain date.

**Recrimination:** A counter-charge by the defendant; esp., in divorce proceedings.

**Remand:** (1) To send a prisoner back to custody after a hearing which has not resulted in a final judgment. (2) The action of an appellate court in sending a case back to the court of original jurisdiction from which it came, to be finally disposed of there

**Remittur:** The order which accompanies the return by an appellate court of the records and proceedings of a case after it has been reviewed, and the appellate court's instructions concerning the future disposition of the case in the court of original jurisdiction.

**Reprive:** The temporary suspension by a Judge or an executive

officer who has the pardoning power of a sentence of death.

**Requisition:** A formal request by the Governor of a state addressed to the Governor of another state, asking that a fugitive from justice residing in the latter state be returned to the former state to answer to an indictment or information.

**Residuary Legatee:** The person who receives all of the testator's estate which was not otherwise bequeathed in his will. **Residuary Estate:** The remaining part of a testator's estate, after the payment of debts and legacies, that has not been particularly bequeathed.

**Restraining Order:** A form of injunction which forbids the defendant to do a threatened act until a hearing can be had to determine whether a temporary or permanent injunction shall issue or be denied.

**Reversible Error:** An error in the trial procedure of an inferior court which warrants a higher court in reversing the judgment of the inferior court.

**Rule:** Verb. (1) To command. (2) To decide. Noun. (1) An established principle. (2) An order made by the court which does not have the force of a judgment.

**Ultra Vires:** From the Latin, "beyond the powers"; the action of a corporation which exceeds the powers granted to it by its articles of incorporation, as for example, when a corporation authorized to sell stocks and bonds engages in the real estate business.

**Vacate:** To annul an order or a judgment.

**Venue:** The county in which an action or prosecution is brought for trial. **Statement of Venue:** That part of a declaration or other pleading which designates the county in which a cause is to be tried.

**Verify:** To substantiate; referring to that part of the declaration in which the plaintiff confirms under oath his belief that the facts alleged in the pleading by his attorney are true.

**Warranty Deed:** A deed in which the grantor of title to land includes a covenant guaranteeing the validity of the title. (See "Quitclaim Deed.")

## APPENDIX III

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# INDEX

Accessory, 55  
 Accidents, reporting of, 290 ff.  
 Actions, forms of, 117  
 Adjective law, 17  
 Adjudication (bankruptcy), 185 ff.  
 Administrative law, 165  
 Administrator, 26  
 Administratrix, 26 n.  
 Admiralty, 36  
 Advance copies, of convention  
 slates, 333 ff.; of speeches, 340,  
 365  
 Advance stories, 148 ff.  
 Affidavit, of complaining witness,  
 56 ff.  
 Affray, 49  
 Agricultural Agent, 312  
 Agricultural Statistician, 212  
 Agriculture, Department of, 209 ff.  
 Air Mail Service, 199  
 Airplane Inspection Service, 219  
 Alabama, local courts in, 23; sys-  
 tem of pleading in, 120 n.  
 Ambassadors, cases involving, 36  
 American Bar Association, pro-  
 ceedings of, 53  
*Amicus curiæ*, 42 n.  
 Ancillary action, 143  
 Answer, 119; form of, 125 ff.  
 Appeal, 153 ff.; time limit of,  
 155 ff.  
 Appeal bond, 156  
 Appearance, 61, 119  
 Appellant, 154  
 Appellate courts, 31 ff.  
 Appellee, 154  
 Appraisal, in bankruptcy proceed-  
 ings, 189  
 Appraiser, Customs, 199, 200; in  
 bankruptcy proceedings, 189  
 Argument, 100, 154, 156

Arizona, local courts in, 23; unani-  
 mous verdict not required in,  
 135 n.  
 Arkansas, local courts in, 23;  
 courts of equity in, 23 n.; system  
 of pleading in, 120 n.  
 Army engineers, resident, 213  
 Arson, 47  
 Assault, 45  
 Assignment, 156; of errors, 151  
 Association of Commerce, 364 ff.  
 Atlanta Constitution, 264  
 Attachment, writ of, 40  
 Attempted crime, 54  
 Attorneys, 76, 77, 82, 83, 117, 151,  
 180, 185, 281, responsibilities of,  
 54, 61, 113, relations with, 96,  
 104, 105, 147 ff.; summations of,  
 101; in Prohibition Division, 204  
 Autopsy, 310  
  
 Bail bond, 24, 58, 61 ff., 112  
 Bailiff, 41, 77, 80, 223  
 Baltimore Sun, 92  
 Bankruptcy, kinds of, 180 ff.; peti-  
 tion in, 180 ff.; act of, 181, 186;  
 improvement of, 190 ff.  
 Banks, news about, 361 ff.  
 Battery, 45  
 Bench warrant, 65  
 Bennett, James O'Donnell, quoted,  
 10 ff.  
 Bent, Silas, 2 n.  
 Bigamy, 49  
 Bill, 118; of particulars, 73; in  
 equity, 121  
 Birmingham News, 277  
 Blotter, police, 262 ff.  
 Board of Education, 246, 250  
 Board of Equalization, 244, 296 ff.

- Board of Health, 234, 249 ff., 310 ff.  
 Board of Police and Fire Commissioners, 260  
 Board of Public Safety, 260  
 Board of Public Works, 246, 250  
 Board of Review, 244, 296 ff.  
 Board of Supervisors, county, 312 ff.  
 Board of Tax Appeals, federal, 35, 223, 224 ff.; local, 296 ff.  
 Board of Trade, 364  
 Board of Trustees, 312 ff.  
 Bond, kinds of, 62, 167, 253 ff.  
 Breach of peace, 49  
 Bribery, 49  
 Brief, 133, 154 ff.  
 Bureau of Labor Statistics, 218  
 Bureau of Public Roads, 212  
 Burglary, 47  
 Business associations, 364 ff.
- Calendar, court, 156  
 California, local courts in, 23; grand larceny in, 48; unanimous verdict not required in, 135 n.  
 Capias, 65  
 Caucus, 330, 344 ff.  
 Center, Harry B., 103  
 Certiorari, writ of, 171 ff.  
 Challenge, for cause, 77; to array, 77  
 Chamber of Commerce, 361, 364 ff.  
 Chambers, Judge's, 168, 221  
 Chancellor, 19 ff.  
 Chancery, Courts of, 20  
 Chapter, of statutes, 18  
 Chicago Crime Commission, 108 n., 110  
 Chicago Commission on Race Relations, 379 n.  
 Chicago Tribune, 11, 87, 136, 279, 282  
 Chief of Police, 242, 260  
 Circuit Court, 21, 22, 23, 24, 33, 300 n.; of Cook County, Illinois, 21  
 Circuit Court of Appeals, United States, 32, 37 ff.; sessions of, 37 n.; jurisdiction of, 38; mandates of, 163, 222 ff.
- Circuit Judge, United States, 38  
 Circuit rider, 22  
 City Attorney, 232, 250 ff.  
 City Auditor, 244  
 City Central, labor, 372 ff.  
 City Chamberlain, 244 n.  
 City Clerk, 231, 232, 245  
 City Collector, 245  
 City Comptroller, 244  
 City Council, 169, 228; in small town, 230 ff.; meetings of, 230 ff., 237 ff.; committees of, 231, 237; functions of, 236 ff.  
 City Electrician, 247  
 City Engineer, 222, 247  
 City Health Officer, 249 ff.  
 City Manager, 235  
 City Prosecutor, 250  
 City Sealer, 247  
 City Solicitor, 250 ff.  
 City Tax Receiver, 245  
 City Treasurer, 231, 244, 245  
 Civil bond, 62  
 Civil Service Commission, 220, 258  
 Clerk. *See* City Clerk, County Clerk, Court Clerk, United States District Court Clerk.  
 Cleveland, *Criminal Justice in*, 108 n.  
 Cleveland Press, 277, 278 n.  
 Cline, Leonard L., 92  
 Clues, 262  
 Coast and Geodetic Survey, 218  
 Code pleading, 122  
 Collector of Customs, 199 ff.  
 Collector of Internal Revenue, 201 ff.  
 Colorado, local courts in, 23; unanimous verdict not required in, 135 n.  
 Commerce, Department of, 218 ff.; Chamber of, 361, 364 ff.; Association of, 364 ff.  
 Commission. *See* Zoning Commission, Civil Service Commission.  
 Commissioner, Court, 139 ff.; United States, 221 ff.; Jury, 222;

- City, 234, 242, 244; Police and Fire, 242
- Commissioner's Court, 33
- Committees, party, 329; State Central, 329 ff.; County, 330; State Executive, 330; on Credentials, 338; on Resolutions, 339 ff.
- Commodities, news about, 359 ff.
- Common law, 18
- Common law pleading, 120
- Commonwealth's Attorney, 63
- Commutation, of sentence, 164
- Complainant, 166
- Complaint, 118; form of, 122 ff.; blank, police, 262 ff.
- Composition (bankruptcy), 184
- Conditional privilege, 130 ff.
- Confession, 281
- Confession of error, 153
- Connecticut, local courts in, 23
- Consolidation of actions, 142
- Conspiracy, 54 ff.
- Constitutional law, 165
- Contempt, kinds of, 49 ff.
- Continuance, 74, 112
- Conventions, political, 332 ff.; reporting of, 339 ff.; business, 365; reporting of, 365 ff.
- Cook, George M., 128
- Copyright, infringement of, 34
- Co-respondent, 144
- Coroner, 298, 301 ff.
- Coroner's Physician, 81, 301
- Corporation Counsel, 250 ff., 301; Court, 33
- Corpus delicti*, 81
- Council, labor, 371, 372; City. *See* City Council.
- Count, 65, 110
- Counterclaims, 144
- County Agricultural Agent, 312
- County Attorney, 300
- County Board, 312 ff.
- County Chairman, 330, 333
- County Clerk, 27, 303 ff., 307
- County Committee, 330
- County Court, 26 n.
- County Health Officer, 310
- County Humane Officer, 312
- County Judge, 25, 307, 311, 313
- County Solicitor, 300
- County Superintendent of Schools, 295
- County Surveyor, 312
- County Tax Collector, 287, 299
- County Treasurer, 297 ff.
- Court Clerk, 23, 38, 40, 62, 70, 72, 77, 80, 117, 119, 130, 133, 147, 149, 156, 158, 163, 168, 181, 214; functions of, 40 ff.
- Court Commissioner, 139 ff.
- Court of Appeals, 31
- Court of Common Pleas, 23
- Court of Criminal Appeals, 33
- Court of Customs Appeals, 35
- Court of Domestic Relations, 22, 25
- Court of Errors and Appeals, 31
- Court of General Sessions, 23
- Court of Oyer and Terminer, 33
- Court of Record, 24
- Court of Special Sessions, 33
- Court Reporter, 41
- Courts, classification of, 22
- Cranch reports, 32 n.
- Creditors, 179 ff.; preferred, 181, 186
- Crime, amount in newspapers, 260
- Crime commission, 112
- Crimes, against the United States, 33 ff., 206; kinds of, 44 ff.; classification of, 44 ff.
- Criminal Justice in Cleveland*, quoted, 108, 132, 276, 277
- Cross-appeal, 156
- Cross-complaint, 143
- Cross-defendant, 143
- Cross-examination, 81, 84
- Cumulative sentence, 110
- Custodian, of Federal Building, 200
- Customs agents, 200 ff.
- Dabney, Judge Archie, 87 n.
- Damages, kinds of, 135 ff.
- Declaration, 118
- Declaratory judgment, 137
- Declaratory statute, 18
- Decree, 20; kinds of, 138
- Deferred sentences, 109

- Delaware, local courts in, 23;  
 equity courts in, 23 n.; appellate  
 courts in, 31; system of pleading  
 in, 120 n.; divorce statute in, 144,  
 146  
 Demurrer, 73, 99, 120, 135  
 Deposition, 133, 141 ff.  
 Detectives, 261 ff.; newspapers as,  
 276, 278  
 Dickens, Charles, 119 n.  
 Direct examination, 80  
 Directed verdict, 99, 135  
 Directory statute, 18  
 Discovery, 122, 139 ff.  
 Discharge, in Probate Court, 26;  
 in bankruptcy, 181, 189 ff.  
 District Attorney, 24, 63, 113, 267  
 District Court, 22, 23  
 District Forecaster, 209  
 District Forester, 213  
 District of Columbia, local courts  
 in, 23; appellate courts in, 31;  
 system of pleading in, 120 n.  
 District Superintendent of Railway  
 Mail Service, 199  
 Dividends (bankruptcy), 189  
 Divorce, decree, 20; proceedings,  
 144  
 Docket, court, 70, 149, 151  
 Dwyer, Orville, quoted, 87  
 Election Commission, 307 ff.  
 Elections, officers of, 307, 319  
 Embezzlement, 48  
 Embracery, 49  
 Equity, definition of, 19; courts  
 of, 19 ff., 23, 25; pleading, 121  
 Examination in chief, 81  
 Examiner, Naturalization, 214 ff.;  
 Civil Service, 220; Trial, 223  
 Examining trial, 59  
 Exceptions, 76  
 Execution, 138 ff.  
 Executor, 26  
 Executrix, 26 n.  
 Ex parte evidence, 66, 147, 167  
 Extradition, 58 ff.  
 Evidence, nature of, 82; rules of,  
 82; kinds of, 82; reporting of,  
 85 ff.  
 False imprisonment, 45  
 Family Court, 25  
 Federal Courts, 33 ff.  
*Federal Reporter*, 32  
 Federal Trade Commission, hear-  
 ings of, 223 ff.  
 Federation, labor, 371, 372 ff.  
 Felony, 24, 44, 59  
 Filmer, Sir Robert, quoted, 19 n.  
 Financial news, 368 ff.  
 Fires, news about, 292  
 Fiscal court, 312 ff.  
 Florida, local courts in, 23; sys-  
 tem of pleading in, 120 n.  
 Ford, Henry, 136, 225  
 Forestry Service, 213  
 Forgery, 48  
 Fraud order, 197  
 Friend of the Court, 41 ff.  
 General Land Office, 220  
 Georgia, local courts in, 23  
 Godwin, William, quoted, 320 n.  
 Grand jury, 24, 63; reporting ses-  
 sions of, 66 ff.  
 Gratitude, rôle of, in politics,  
 319 ff.  
 Habeas corpus, 58, 111, 165  
 Hawaii, system of pleading in,  
 120 n.  
 Highway Commissioner, 306 ff.  
 Highways, 306 ff.  
 Holmes, O. W., quoted, 130  
 Homicide, 45 ff.  
 Hospital, news about, 290 ff.  
 Hoxie, R. F., quoted, 373 n.  
 Hughes, Charles Evans, 139  
 Humane Officer, 312  
 Idaho, local courts in, 23; unani-  
 mous verdict not required in,  
 135 n.  
 Illinois, local courts in, 23; sys-  
 tem of pleading in, 120 n.  
 Immigration, 216 ff.  
 Income Tax Division, 201  
 Incompetent testimony, 83



- Indeterminate sentence, 110
- Indiana, local courts in, 23
- Indictment, 62 ff.; form of, 64; technicalities in, 112
- Industrial disputes, 375 ff.
- Inferior courts, 23 ff.
- Injunction, writ of, 20, 165 ff.; dissolution of, 167; extension of, 167; form of, 168; government by, 168; reinstatement of, 168
- Information, form of, 68
- Infringement of copyright, 34
- Inquest, coroner's, 301 ff.
- Insanity, defense of, 75
- Inspector, Immigration, 216 ff.; of Hulls, 218 ff.; of Boilers, 218 ff.; Airplane, 219; of Weights and Measures, 247; Plumbing, 247; Gas Meter, 247; of Police, 260
- Instructions to jury, 96, 101 ff.
- Interchurch World Movement investigation, 379 n.
- Interior, Department of, 220
- Interest-groups, 300 ff.
- Intermediate appellate courts, 31
- Interpreter, 223
- Interrogatory part, of bill in equity, 121
- Interstate Commerce Commission, hearings of, 223, 224
- Intervening action, 143
- Intestate, 25
- Iowa, local courts in, 23
- Irrelevant testimony, 82 ff.
- Issues, 321; formulation, 321; ephemeral, 324 ff.; false, 325; intellectual, 325 ff.; explaining the, 351 ff.
- Jailer, 208
- John Doe hearing, 68
- John Doe warrant, 55 n.
- Judge, 70, 72, 75, 80, 82, 81, 108 ff., 111, 120, 147, 152, 153, 166; functions of, 33 ff. contempt power of, 51 ff.; instructions of, 101 ff.; criticizes verdict, 105 ff.; comment by the, 106
- Judgment, 70, 136; *non obstante veredicto*, 137; declaratory, 137; consent, 138; note, 139
- Judicial district, 22
- Judicial procedure, Continental, 68 n.
- Judiciary acts of United States, 37, 154
- Jurisdiction, 20, 24; of federal courts, 33 ff.
- Juror, thirteenth, 77 n.
- Jurors, selection of, 63, 76 ff.; reporter's relations with, 106
- Jury, coroner's, 310 ff.
- Jury Commission, 61, 63
- Jury commissioners, 41, 76, 222
- Jury panel, 76 ff., 119, 186
- Justice, Department of, 205 ff.
- Justices' Court, 24, 36
- Justices of appellate court, 155
- Juvenile Court, 7 n., 25
- Kansas, local courts in, 23; system of pleading in, 120 n.
- Kansas rule, 19
- Kavanagh, M., quoted, 17 n.
- Kent, F. R., quoted, 319, 352 ff.
- Kentucky, local courts in, 23; appellate court in, 31; system of pleading in, 120 n.; unanimous verdict not required in, 135 n.
- Kidnapping, 45
- Labor, Department of, 214 ff.; organization, structure of, 370 ff.; Statistics, Bureau of, 370 ff.; leaders, relations with, 379 ff.
- Land Court, 33
- Land Office, 220
- Larceny, 47 ff.
- Law, adjective, 17; substantive, 17; common, 18; statute, 18; and equity 19, applied in United States courts, 35 ff.; administrative 101, constitutional, 165; public, 165
- Law enforcement, in counties, 208 ff.

- Leaders, identifying the, 348 ff.  
 Leadership, 326; of newspaper, 327 ff.  
 Leading question, 83  
 Lee, R. M., quoted, 282 ff.  
 Leech, Harper, quoted, 379 n.  
 Letters, of administration, 26; testamentary, 26; rogatory, 133  
 Libel, criminal, 49  
 Life Saving Service, 205  
 Lighthouse Service, 218  
 Lippmann, Walter, quoted, 327 ff.  
 Local, labor union, 370 ff.  
 Lockouts, 378 ff.  
 Louisiana, civil law in, 19 n., 120; local courts in, 23; unanimous verdict not required in civil cases in, 135 n.  
 Magistrates' Court, 24  
 Maim, 45  
 Maine, local courts in, 23; appellate court in, 31; system of pleading in, 120 n.  
 Malicious mischief, 48  
 Mandamus, writ of, 169 ff.  
 Mandate, 163  
 Mandatory injunction, 166  
 Mandatory statute, 18  
 Manslaughter, 46 ff.  
 Market reporter, 360  
 Marshal, 193, 197, 208 ff.  
 Maryland, local courts in, 23; appellate court in, 31; system of pleading in, 120 n.  
 Massachusetts, local courts in, 23; appellate court in, 31; system of pleading in, 120 n.  
 Massachusetts rule, 19, 131 ff.  
 Master, 139, 221  
 Mayhem. *See* Maim.  
 Mayor, 230, 231, 232, 234, 254 ff.; of Milwaukee, 325  
 Medical Examiner, 301 ff.  
 Mellett, Don, 277  
 Metcalf reports, 32 n.  
 Meteorologist, 209  
 Michigan, local courts in, 23; system of pleading in, 120 n.  
 Minnesota, local courts in, 23; defense argument in, 100; unanimous verdict not required in, 135 n.  
 Miscegenation, 49  
 Misdemeanor, 24, 34, 44, 61  
 Mississippi, local courts in, 23; court of equity in, 23 n.; system of pleading in, 120 n.  
 Missouri, local courts in, 23; unanimous verdict not required in, 135 n.  
 Missouri Crime Survey, 299 n., 303 n.  
 Mistrial, 104  
 Mittimus, 164  
 Montana, local courts in, 23; unanimous verdict not required in, 135 n.  
 Motion, 72; in arrest of judgment, 108; day, 134; for a new trial, 151 ff.  
 Municipal Court, 24, 228  
 Murder, definition of, 46; degrees of, 46; penalty for, 46 ff.  
 Narcotic agents, 204  
 Narrative technique, 12, 82 ff., 86  
 National Association of Credit Men, 187  
 Naturalization, 214 ff.  
 Nebraska, local courts in, 23  
 Nevada, local courts in, 23; unanimous verdict not required in, 135 n.  
 New Hampshire, local courts in, 23; system of pleading in, 120 n.  
 New Jersey, local courts in, 23; courts of equity in, 23 n.; probate courts in, 26 n.; appellate courts in, 31; reports, 32 n.; system of pleading in, 120 n.  
 New Mexico, local courts in, 23; degrees of murder in, 46 n.  
 New trial, 76; grounds for, 80, 151  
 New York, local courts in, 23; appellate court in, 31  
 New York Times, 10, 278 n.  
 News, definition of, 1

- Newspaper, definition of, 2; trial by, 278 ff.; rôle of, in politics, 327 ff.
- Night court, 59
- Nisi prius* court, 165
- Nol prosequi*, 74
- Nolo contendere*, 75
- Noncommittal verdict, 302
- Nonsuit, 135
- North Carolina, local courts in, 23
- North Dakota, local courts in, 23
- Notary Public, 141
- Obiter dictum*, 162 ff.
- Obtaining by false pretenses, 48
- Officers' Reserve Corps, 213 ff.
- Official bond, 62
- Ogg, F. A., quoted, 194 n.
- Ohio, local courts in, 23; conditional privilege in, 131; newspapers, 362 n.
- Oklahoma, local courts in, 23
- Open verdict, 302
- Opening statement, 80
- Opinion, 147; kinds of, 157 ff.
- Oral interrogatory, 141
- Order, 40; restraining, 156 n.
- Ordinances, 235 ff.
- Oregon, local courts in, 23; justices' Courts in, 24; system of pleading in, 120 n.
- Orphan's Court, 26 n.
- Owen, Russell, quoted, 10
- Panel, jury, 76 ff., 119, 186
- Pardon, 163 ff., 206 ff.
- Park Board, 250 ff.
- Parole, 163 ff.
- Pathologist, 302
- Peace bond, 62
- Penalty for murder, 45 ff.; for crime, 109
- Penitentiaries, 102, 209
- Pennsylvania, local courts in, 23; system of pleading in, 120 n.
- Peremptory challenge, 77
- Perjury, 49
- Permanent Chairman, 338 ff.
- Petition, 118; form of, 122; in bankruptcy, 180 ff.
- Pinchot, Amos, quoted, 240 n.
- Planning and Zoning Commission, 228, 234, 256
- Plans of city government, 233
- Plea in abatement, 73; of former jeopardy, 73; to the jurisdiction, 74; for mercy, 109; in confession and avoidance, 121
- Pleadings, 40, 119; reporting of, 127 ff.; in appellate courts, 154 ff.
- Pleas, special, 72 ff.
- Plumbing Inspector, 247
- Police, courts, 24; relations with, 36, 291; organization of, 260 ff.; blotter, 267 ff.; honesty of, 281
- Police and Fire Commission, 228, 234, 260
- Police reporter, duties of, 292 ff.
- Political machines, 316 ff., 318 ff.
- Political reporter, 315
- Politics, nature of, 316 ff.; profits of, 317 ff.
- Port of delivery, 200
- Port of entry, 193, 199 ff.
- Posse comitatus*, 208
- Post Office Department, 194 ff.
- Post Office Inspectors, 196 ff.
- Postmaster, 195 ff.
- Præcipe, 118
- Precinct Committeeman, 319 ff.
- Preliminary trial, 24, 59
- Presentment, 62, 64, 65
- Press associations, 155, 160, 163, 226 ff.
- Principal, degrees of, 55; in criminal trial, 71
- Private prosecutor, 62
- Privilege. *See* Conditional privilege.
- Probate Court, 25 ff.
- Probation, 102, 164
- Proceedings, kinds of, 17, 18
- Prohibition, writ of, 171 ff., Division, 203 ff.
- Prosecuting Attorney, 63, 66, 80, 81, 204, 300 ff.
- Public law, 175
- Public Roads, Bureau of, 212

- Public Safety, Board of, 242 ff., 260  
 Public utilities, 251 ff.  
 Publication, service by, 21 n.
- Qualified privilege, 130  
 Quarterly Court, 33  
 Quash, motion to, 72  
 Quo warranto, writ of, 175 ff.
- Raids, 58 ff.  
 Railroads, news about, 363  
 Rape, 45  
 Real estate, news about, 362 ff.  
 Realtor, 362 n.  
 Rebuttal, 100  
 Receiver, in bankruptcy, 184 ff.; in Public Land Office, 220  
 Receivership, 190  
 Recognizance, 61  
 Record, 41, 83, 108, 156  
 Recorder, 27, 303 ff.  
 Recorder's Court, 33  
 Recruiting officers, 214  
 Redirect examination, 81  
 Referee in Bankruptcy, 139, 184 ff., 221, 226  
 Referee's Clerk, 180, 189  
 Reforms in criminal code, 111 ff.  
 Regional reporters, names of, 32  
 Register, 27; in Public Land Office, 220; of deeds, 303 ff.  
 Remittur, 163  
 Removal, 35, 144  
 Replevin, 117 n.  
 Replication, 121  
 Reply, 119  
 Reporter, qualifications of, 3 ff.; duties and obligations of, 3, 130; regional, 32; Court, 41; thinks ahead, 96; police, 292 ff.; political, 315; market, 360  
*Reporter, Federal*, 32  
 Reports, official, 31 ff.; unofficial, 32  
 Reprieve, 164  
 Resident army engineers, 213
- Resolutions of City Council, 235; of labor unions, 370, 372  
 Respondent, 144, 154  
 Restraining order, 166 n.  
 Return, 58, 133, 222  
 Revenue Cutter Service, 205  
 Rhode Island, local courts in, 23; system of pleading, 120 n.  
 Riot, 49  
 Ritchie, Gov. A. C., quoted, 351 n.  
 Robbery, 48  
 Roberts, K. L., quoted, 111 n.  
 Rusk, Parker, quoted, 264
- Sacco-Vanzetti case, 150 ff.  
 Sealed verdict, 104  
 Search warrant, 57 ff.  
 Secret Service, 207 ff.  
 Secretary, of Civil Service Commission, 220; of conventions, 365  
 Sentence, 108  
 Sequestration of witnesses, 80  
 Service, 21 n., 32 ff.  
 Severance, motion for, 75  
 Sheriff, 63, 66, 70, 118, 133, 137, 298 ff., 307  
 Sherriff, Andrew R., quoted, 107  
 Sinclair, Upton, 379 n.  
 Situations, in criminal trial, 90 ff.  
 Slate, making up the, 345 ff.  
 Small Claims Court, 22 n.  
 Solicitation to commit crime, 54  
 Solicitor, 250 ff., 300  
 South Carolina, local courts in, 23  
 South Dakota, local courts in, 23; Justices' Courts in, 24; unanimous verdict not required in, 135 n.  
 Special agents of the Department of Justice, 207  
 Special pleas, kinds of, 72  
 Special verdict, 109, 136  
 Standing Master in Chancery, 221, 226  
 State Central Committee, 329 ff.  
 State Executive Committee, 330  
 State Pathologist, 302  
 State Toxicologist, 302  
 State Treasurer, 297

- Statute law, 18  
 Statute of limitations, 73  
 Statutes, kinds of, 18  
 Steamboat Inspection Service, 218 ff.  
 Steffens, Lincoln, 233  
 Stone, M. E., quoted, 340 n.  
 Street Superintendent, 247  
 Strikes, reporting of, 378 ff.  
 Subornation of perjury, 49  
 Subpoena, 133; *duces tecum*, 134  
 Substantive law, 17  
 Summary jurisdiction, 59  
 Summation, 101  
 Summons, 21, 56 n., 63, 118 ff., 131 ff.  
 Superintendent of Mails, 196; of Lighthouses, 199, 218; Street, 247; of Waterworks, 252 ff.; of Schools, 253, 295, 309 ff.; of the Morgue, 301; of Poor Farm, 311  
 Superior Court, 23; of Cook County, Illinois, 21, 23  
 Supersedeas, writ of, 128, 155  
 Supreme Court, 23, 31  
 Supreme Court of Appeals, 31  
 Supreme Court of Errors, 31  
 Supreme Court of the United States. *See* United States Supreme Court.  
 Supreme Court Reporter, 32  
 Supreme Judicial Court, 31  
 Surety, 61  
 Surrogate Court, 26  
 Suspended sentence, 109  
 Taft, W. H., quoted, 52  
 Taxation, by municipalities, 245; by counties, 296  
 Technicalities, in indictment, 112; in pleadings, 119  
 Temporary Chairman, 337 ff.  
 Tennessee, local courts in, 23; courts of equity in 21 n. system of pleading in, 120 n.  
 Testate, 25  
 Testimony, form of, 94, defense 99, rebuttal, 109  
 Texas, local courts in, 23  
 Thompson, William Hale, 345 n.  
 Title, of statutes, 18  
 Tort, 44, 117, 136  
 Toxicologist, 302  
 Trade Commission, Federal, 223 ff.  
 Traffic Bureau, 367  
 Transcript, 41, 94, 156  
 Traverse, 121  
 Treasury Department, 199 ff., 208, 223, 225  
 Treasury operatives, 204 ff.  
 Treaties, 34 ff.  
 Trial, setting of, 71; civil, 133; by newspaper, 278 ff.  
 Trover, 117  
 True bill, 64  
 Trustee, of the Jury Fund, 41, 312. in bankruptcy, 187 ff.; for the sinking fund, 245  
 Unanimous verdict not required, when, 135 n.  
 United States, crimes against the, 33 ff., 206  
 United States Circuit Court of Appeals. *See* Circuit Court of Appeals  
 United States Circuit Judge, 38  
 United States Commissioner, 221 ff., 226  
 United States Compiled Statutes, 18  
 United States District Attorney, 34, 201, 205 ff.  
 United States District Court, 32, 35, 36 ff., 180, 220 ff.; divisions of, 221  
 United States District Court Clerk, 214, 222 ff.  
 United States District Judge, 190, 206, 221, 226  
 United States Marshal. *See* Marshal.  
 United States Public Health Service, 200  
 United States Statutes at Large, 18  
 United States Supreme Court, 23, 31, 32, 35 n., 37 ff., 160, 174  
 United States Supreme Court Reports, 18